

**REGISTRATION FORM
FOR ONLINE
INVITATION FOR BIDS (IFBs)**

Bidders interested in responding to this solicitation may do so by using the electronic solicitation posted on the Procurement Notice System (PNS) website. Bidder must first register itself by completing and submitting this form. Bidder shall then print a hard copy of the solicitation.

IFB Number:	IFB D10-148
IFB Title:	Provide Palm Tree Trimming Services for Various Schools on Kauai, Districts I, II, and III
IFB Deadline:	
Name of Company:	
Mailing Address:	
Name of Contact Person:	
Contact's Email Address:	
Telephone No. / Facsimile No.:	

This form must be e-mailed to gwen_nakamoto@notes.k12.hi.us or faxed to (808) 675-0133 prior to the deadline for bid submittal.

If Bidder fails to register, Bidder will not receive any addenda and/or other procurement notices; its offer may therefore be rejected and not considered for award.

DEPARTMENT OF EDUCATION
PROCUREMENT AND CONTRACTS BRANCH

May 21, 2010

INVITATION FOR BIDS

No. IFB D10-148

SEALED BIDS

TO

PROVIDE

PALM TRIMMING SERVICES

FOR VARIOUS SCHOOLS ON KAUAI,

DISTRICTS: I (EAST COMPLEX), II (WEST COMPLEX),

III (CENTRAL COMPLEX),

AND OTHER VARIOUS AREAS

will be received up to and opened at 2:00 p.m. (HST)

on

June 1, 2010

in the DOE Procurement and Contracts Branch, Waipahu Civic Center, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797. Bids received after the established deadline will not be considered.

A copy of the pruning details and notes for the Bidder's reference for all trees, school listings, and plot plans are attached.

Questions relating to this bid solicitation may be directed to Ms. Gwen Nakamoto at telephone (808) 675-0130, via facsimile (808) 675-0133, or via email at: gwen_nakamoto@notes.k12.hi.us

Name of Company

**PROVIDE PALM TRIMMING SERVICES
FOR VARIOUS SCHOOLS ON KAUAI,
DISTRICTS I, II, AND III
IFB D10-148**

Chief Procurement Officer
State of Hawaii, Department of Education
Honolulu, Hawaii 96813

To Whom It May Concern:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications, Special Conditions, and the General Conditions attached hereto and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

The undersigned represents: **(Check ☒ one only)**

- ☐ A **Hawaii business** incorporated or organized under the laws of the State of Hawaii; **OR**
- ☐ A **Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii, but registered at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii.
State of incorporation: _____

Bidder is:

☐ Sole Proprietor ☐ Partnership ☐ Corporation ☐ Joint Venture ☐ Other _____

Federal I.D. No.: _____ Hawaii General Excise Tax License I.D. No.: _____

Payment address (other than street address be: _____

City, State, Zip Code: _____

Business address (street address): _____

City, State, Zip Code: _____

Date: _____

Respectfully submitted:

Telephone No.: _____

Authorized (Original) Signature

Fax No.: _____

Name and Title (Type or Print)

E-mail Address: _____

* _____
Exact Legal Name of Company (Bidder)

*If Bidder is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed: _____

The following bid is hereby submitted:

DISTRICT I, II, & III: East, West & Central Complex Areas			1st Trimming: July 2010		2nd Trimming: January 2011		
Item No.	Type of Palm	No. of Palms	Bid Price/Palm	(a) Subtotal Bid Price	Bid Price/Palm	(b) Subtotal Bid Price	(a+b)= TOTAL BID PRICE
1	Coconut	10					
2	Royal	4					
3	King	25					
4	Loulu	118					
	Total	157					
TOTAL BID PRICE, Items 1-4:			1st Trimming:	\$ -	2nd Trimming:	\$ -	
TOTAL SUM BID:							

Bidder must bid on all items to qualify for award.

The following bid is hereby made:

Additional Palm Work
Exhibit A

<u>Palm Type</u>	<u>Unit</u>	<u>Pruning Service</u>	<u>Stump Removal only</u>	<u>Palm & Stump Removal</u>
Coconut palm	Each	\$	\$	\$
Royal palm	Each	\$	\$	\$
King palm	Each	\$	\$	\$
Loulou palm	Each	\$	\$	\$

I. PUBLIC EMPLOYEE WAGES

Bidder shall complete the following table. This information shall be used to verify that bidder has calculated the appropriate public employees' wages into the bid price.

Position Title	(a) No. of Workers/ Trim	(b) Estimated Labor Hours/Trim	(c) Minimum Wage Rate	(a) x (b) x (c) = Total
Tree Trimmer-Truck Driver (BC-05)			\$17.77	\$
Tree Trimmer (BC-07)			\$19.22	\$
Total Labor:				\$
Plus Other Costs:				\$
Total Bid Price*:				\$

* **Total Sum Bid Price** should be the same as the Total Sum Bid as stated on Offer Page OF-2.

Percentage of Total Sum Bid representing total labor cost: _____%
(Estimated Total Labor of the Total Sum Bid)

II. ADDITIONAL/ EMERGENCY PALM WORK

In the event additional/emergency work (pruning, stump removal, and/or palm removal) is authorized by the Contract Administrator, services shall be provided in accordance with the attached Specifications. Additional/emergency work shall be billed separately from the contract and in accordance with the bid prices provided on Exhibit A.

III. BIDDER INFORMATION

Bidder shall also provide the following information:

A. Hawaii Type C-27 or C-27-B License No.: _____
(Attach photocopy of license)

B. Number of years of experience in tree trimming services: _____

C. Point-of-Contact (**based in Kauai**)

Name: _____

Address (**in Kauai**) _____

Telephone No.: _____ Fax No.: _____

Cell / Pager No.: _____

E-mail Address: _____

D. Name of ISA Certified Arborist: _____

Certification No.: _____ Expiration Date: _____
(Attach photocopy proof of minimum 5-year certification and current and previous expired certificates)

E. Insurance coverage is carried by:

	Carrier	Policy No.	Agent
Commercial General Liability:			
Automobile Liability:			
Worker's Compensation:			
Temporary Disability:			
Prepaid Health Care:			

F. Unemployment Insurance: State of Hawaii, Dept. of Labor No.: _____

G. List of employees who will be servicing this contract. Bidder shall attach a list of employee names and position titles and/or descriptions.

H. List of vehicles and/or equipment to be used to service this contract. Bidder shall attach a list of vehicles and/or equipment to be used in servicing this contract. The list must include vehicle/equipment license numbers. If a license number is not available, Bidder must provide an alternative means of identification (e.g., numbering or lettering system) to designate the different equipment; e.g., wood chipper A, wood chipper B, etc.

I. List of all current contracts that Bidder is actively servicing at the time of bid submittal. Bidder shall attach a list of current contracts bidder is actively servicing.

J. List of references. Bidder shall list at least three (3) references in the State of Hawaii, other than State of Hawaii government, for whom Bidder has or is performing tree trimming services on a regular basis. Services shall be similar in nature and volume to the services specified in this bid qualifying bidder to perform the project. The DOE reserves the right to reject a bid submitted by any bidder whose performance on other jobs for this type of service has been proven unsatisfactory.

	Name	Address	Telephone No.
1.	_____	_____	_____
	_____	_____	_____
2.	_____	_____	_____
	_____	_____	_____
3.	_____	_____	_____
	_____	_____	_____

WAGE CERTIFICATE

Subject: Project No. IFB D10-148

Description of Project: Provide Palm Trimming Services at Various Schools on Kauai, Districts I, II, III and other Various Areas

Pursuant to 103-55, HRS, I hereby certify that, if awarded a contract in excess of \$25,000.00, the services to be performed will be performed in accordance with the following conditions:

1. The services to be rendered shall be performed by employees paid at wages or salaries not less than wages paid to the public officers and employees for similar work, if similar positions are listed in the classification plan of the public sector.
2. All applicable laws of the Federal and State governments relating to worker's compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

Contractor shall be obliged to notify its employees performing work under this contract of the provisions of 103-55, HRS, and the current wage rate for public employees performing similar work. The Contractor may meet this obligation by posting a notice to this effect in the Contractor's place of business accessible to all employees, or the contractor may include such notice with each paycheck or pay envelope furnished to the employee.

I understand that, in addition to the base wages required by 103-55, HRS, all payments required by Federal and State laws that employers must make for the benefit of their employees shall be paid.

Bidder: _____

Signature: _____

Title: _____

Date: _____

SPECIFICATIONS

SCOPE OF WORK

The primary objective of palm pruning services is to address and/or reduce potentially hazardous tree conditions. The CONTRACTOR shall use standard arboricultural practices that maintain and improve the overall general health and aesthetic appearance of the trees. Pruning practices shall be based upon the tree's predictable responses to pruning cuts and should correct problems rather than create new ones.

Work included under this agreement shall consist of furnishing and paying for all labor, equipment, tools, and materials to perform all operations in connection with providing various tree and palm trimming services at various schools on Hawaii, as specified herein and shall be in accordance with these Specifications, the Special Conditions, and the General Conditions.

A copy of the pruning details, and notes for the Bidder's reference for all trees, school listings, and plot plans are attached.

TREE TRIMMING TERMINOLOGY

1. Crown Cleaning for palms: Removal of dead, dying, diseased, damaged, weakly attached, dry fronds and broken stubs; removal of flowers, inflorescence, fruits, nuts at any stage of growth; clearing of all excessive growth, including all epiphytes and vines.
2. Crown Containment: Selective pruning shall include pruning crown on all sides; provide overhead clearance by pruning fronds away from obstacles such as buildings, roofs, flag poles, etc.
3. Crown Raising: Removal of the crown's lower fronds to provide adequate overhead clearances for pedestrian and vehicle traffic. Also called, raising the ceiling of the tree.
4. Stump Grind: Mechanical grinding of the stump and any above and below grade roots to render the tree unable to grow.

DESCRIPTION OF WORK

All work shall be performed in accordance with applicable Federal, State, and County rules and regulations. The CONTRACTOR shall obtain all necessary licenses, permits, and certifications required in full performance of this contract. Work shall also be in compliance with the current version of:

- ANSI A300 Part 1: Tree, Shrub and Other Woody Plant Maintenance-Standard Practices (Pruning)
- ANSI A300 Part 2: Tree, Shrub and Other Woody Plant Maintenance-Standard Practices (Fertilization)
- ANSI A300 Part 3: Tree, Shrub and Other Woody Plant Maintenance-Standard Practices (Support Systems: Cabling, Bracing, and Guying)
- ANSI A300 Part 4: Tree, Shrub and Other Woody Plant Maintenance-Standard Practices (Lightning Protection)
- ANSI Z133.1-2006: Pruning, Trimming, Repairing, Maintaining, and Removing Trees, and Cutting Brush-Safety Requirements.

TRIMMING REQUIREMENTS

The following are the principal items of work to be performed:

3. **PALMS: Trim and shape**- Unless otherwise indicated herein, trim and shape shall mean:
 - a. The CONTRACTOR shall use recognized horticultural practices in trimming the palm trees and shall refer to **Exhibits 1, 3, and 4 drawings** showing trimming requirements.
 - b. All palm trees shall be "Crown Cleaned" to include, but not be limited to: removal of all dead,

dying, diseased, damaged, weakly attached, dry fronds, and broken stubs; removal of flowers, inflorescence, fruits, and nuts at any stage of growth; clearance of all excessive growth, including all epiphytes, vines; provide clearance away and/or overhead clearance of obstructing fronds from buildings, roofs, signs, fence lines, utilities, flag poles, driveways, street lights, private property, vehicle/pedestrian traffic areas and other obstacles.

- c. CONTRACTOR shall remove all hanging fronds caused by the CONTRACTOR's damage to the base of leafstalks.
- d. CONTRACTOR shall minimize spiking the coconut palm trees. **THE CONTRACTOR SHALL NOT USE SPIKES ON ANY OTHER PALMS**, with the exception to palms that may be designated for removal.
- e. Royal Palm, specific instructions:
 - Upon completion of each Royal Palm trimming work, the CONTRACTOR at CONTRACTOR's own expense, shall provide and **install and firmly secure at least two (2) elastic "bungee" cords around the mid-section at two (2) levels within the sheath area for each palm, so as to maintain the security of the sheath material in place during and before the next trim cycle period.**
 - The CONTRACTOR shall maintain and annually replace the elastic cord material at the CONTRACTOR's own expense, and for the duration of the contract.

The CONTRACTOR shall make clean cuts close to the trunk without injuring the trunk and/or remaining fronds.

ARBORIST

For the duration of the contract, there shall be one (1) qualified arborist on site at all times when tree work is being performed. No breaks will be allowed to accommodate the use of one (1) arborist on a separate contract or job. The qualified arborist shall be in compliance at all times with the contract requirements. In the event that the CONTRACTOR fails to provide a qualified arborist at the worksite during any phase of ongoing tree operation, the Contract Administrator (hereinafter referred to as "CA") or his designee has the right to temporarily suspend work operation and/or terminate the contract during any phase of the contract due to CONTRACTOR's non-compliance. Work operation may resume upon approval by the CA and/or designee, when the CONTRACTOR's non-compliant performance has been satisfactorily corrected for all non-performance issues. Any losses resulting from work delays, due to the CONTRACTOR's non-compliant performance shall be the sole responsibility of the CONTRACTOR and shall be promptly remedied by the CONTRACTOR at his own expense.

ARBORIST'S RESPONSIBILITIES

All tree maintenance operations shall be under the direct supervision of a qualified arborist. As proof of the qualified arborist's historic certification and qualifications, the CONTRACTOR shall provide in writing, the name of the qualified arborist and provide as proof a copy of their minimum five (5) year certification and copy of their current and previously expired ISA certificates, which includes the certification number and expiration date. Proof of Certification shall be reviewed for approval by the CA and/or Officer in Charge at the time of bid submittal. Failure to provide the required documentation shall result in rejection of bid.

The qualified arborist shall:

1. Possess five (5) years of work experience as an ISA "qualified Arborist," which includes:
 - Knowledge and experience in the pruning practices and maintenance of all tree species included in this contract.
 - A sound knowledge and understanding of local palm species and their growth rates.
 - Possession of a thorough working knowledge of ANSI Z133.1-2006 and ANSI A300.

- Demonstrated ability and experience to supervise the Contractor crew to ensure the satisfactory completion of operations including, but not limited to, insuring proper clearances, proper pruning techniques, productivity, cleanup, safety, and compliance with this contract.
 - Experience in the recognition, diagnosis, and examination of palm trees for indication of hazardous conditions such as the presence of disease, decayed trunk or cracks, presence of termites, dead or dying palms, poor structure, or other structural stability and safety prior to climbers entering palm trees. Ability to recognize and report hazardous conditions that cannot be addressed by corrective pruning described in this contract.
2. Maintain certification as a "Certified Arborist" by the International Society of Arboriculture (ISA) throughout the contract period. In the event that the qualified Arborist's current ISA certification will expire during the course of the awarded contract, the CONTRACTOR shall submit, in writing, a copy of the letter(s) mailed to ISA asking for a sixty (60)-day extension, and the written response and approval from ISA to extend the certification. The CONTRACTOR shall also provide the number of CEU's (continuing education units) obtained up to this point and a plan of course of action to be taken to maintain the thirty (30) total credits needed by the end of the sixty (60)-day deadline.
 3. Write a letter to the CA stating which contract he/she will be working on.
 4. Be physically present on site, at all times, while work is being performed. No breaks will be allowed to accommodate the use of one (1) arborist on a separate contract or job.
 5. Represent the CONTRACTOR at the worksite and be competent to serve in the capacity to act on behalf of the CONTRACTOR, and to understand and carry out instructions, which may be given by the CA or an authorized representative of the CA. The CONTRACTOR shall keep the CA advised at all times as to identity of this person.
 6. Determine whether an electrical hazard exists before climbing, or otherwise entering, or performing work on or in a palm tree. Only qualified line-clearance arborists shall be assigned to work where an electrical hazard exists. All work in proximity to electrical hazards shall be performed according to the provisions of ANSI Z133.1-2006 Section 4.2, Working in Proximity to Electrical Hazards.
 7. Conduct inspection and assessment for structure and safety when aerial lifts are used to enter trees; tree inspection is still required.
 8. Report defects immediately, and follow up with a written report to the CA and/or an authorized representative of the CA.
 9. Remain, at all times, within vision or voice communication of the crew performing the tree maintenance operations.
 - The CONTRACTOR shall provide the qualified arborist a cellular telephone by which the CA or authorized representative can contact this person to get their location, in case of complaints, and in case of emergencies. The CONTRACTOR shall provide an immediate response to requests from the CA and/or authorized representative.

WORK SCHEDULE

1. Within ten (10) days of contract award, the CONTRACTOR shall submit a proposed written schedule for trimming at each school for review and approval by the CA. **The work under this contract shall commence July 1, 2010 and shall be completed by September 30, 2010 or within such additional time as authorized by the CA.** Scheduling may be modified by the CA or schools as required during the Contract.
2. Work shall be performed Monday to Friday during daylight hours and during normal school business hours. Work during Saturdays, Sundays, and/or holidays may be granted upon the CONTRACTOR's written request, school site locations as agreed to with each principal, and approval by the CA and/or representative. Any work performed outside of normal school business

hours shall be coordinated with the approval of each school principal, including site access.

1st Trimming Cycle: July 2010

2nd Trimming Cycle: January 2011

3. The CONTRACTOR shall at all times conduct his work to assure the least possible disruption of activities by the school and the general public.
4. The CONTRACTOR shall coordinate directly with the school to determine acceptable dates and times to trim. The CONTRACTOR shall notify the principal of the school **forty-eight (48) hours prior to the scheduled** start of work at the school.
5. The order of work shall be performed within the school district indicated in these specifications. Scheduling may be modified by the CA as required during the Contract. CONTRACTOR must complete all work at a school before starting at the next school.
6. Work shall not commence earlier than the official commencement date on the Notice to Proceed. If the official commencement date on the Notice to Proceed is later than the commencement date noted above, CONTRACTOR shall complete the work within the official commencement date on the Notice to Proceed.
7. Adverse conditions which may require major field changes not stated in the contract shall be reported to the CA prior to commencement or continuation of work.
8. Daily Reporting: Between 8:00 a.m. and 8:30 a.m. on each regular business day of the State, the CONTRACTOR shall report to the CA or Authorized Representative of the CA, the progress, if any, of the previous day's work and give the location of trees to be trimmed that day and report any diseased, damaged, or in adverse condition. There shall be no deviation from these Daily Reporting requirements.

IDENTIFICATION AND QUANTITIES OF VARIOUS PALMS

Identification and quantities of the various palms are indicated on the attached Inspection Forms.

On occasion, errors in identification and quantities of the palm trees may occur. The CONTRACTOR shall notify the CA and await further direction regarding any such discrepancies.

In the event the actual number of palms is less than the quantities indicated in the contract, the reduction in contract amount shall be based on the unit price for that school, for that particular palm tree. Upon discovery of unspecified and/or extra trees/palms, the CONTRACTOR shall report the quantity, identity, and the location of the palm to the CA.

WORKMANSHIP

All work shall be executed in a professional manner and all trimmings and debris shall be removed on the same day as it is generated. Trimmings and debris shall not be left unattended at the work site by the CONTRACTOR. Trimmings and debris shall be disposed of at the recycling facilities or disposal sites that meet requirements of all governmental agencies. There shall be no deviation pertaining to removal of trimmings and debris.

All work done shall be subject to inspection and approval of the CA; all services rendered shall be in accordance with these specifications and provisions.

INSPECTION BY THE SCHOOL

The CONTRACTOR shall obtain the signatures and dates as required on the Inspection Form from the

principal or authorized representative to certify completion of all work at that particular school.

INSPECTION BY THE CONTRACT ADMINISTRATOR

1. The CA and/or representative shall inspect the CONTRACTOR's work during any phase of the contract to assure that the CONTRACTOR is in satisfactory performance and in compliance with all contract requirements.
 - a. Compliance shall include, but is not limited to, CONTRACTOR's performance to satisfactorily coordinate school scheduled work arrangements, quality control of tree pruning operation, tree health assessments, and/or according to contract requirements.
 - b. In addition, the CA and/or representative shall monitor the CONTRACTOR to assure that the qualified arborist maintains presence on the job site, direct supervision, and palm maintenance quality at the work site at all times during palm pruning operation.
 - c. In the event that the CONTRACTOR fails to be in compliance with any specific performance according to contract requirements, such as failure to provide a qualified arborist at the worksite during any phase of ongoing palm pruning operation, the State reserves the right to terminate the contract immediately.
 - d. The CA has the right to temporarily suspend work operation during any phase of the contract due to the CONTRACTOR's non-compliance. Work operation may resume upon approval by the CA and/or representative, when the CONTRACTOR is in compliance and has satisfactorily corrected all non-performance issues. Any losses resulting from work delays due to the CONTRACTOR's non-compliant performances shall be the sole responsibility of the CONTRACTOR, and shall be promptly remedied by the CONTRACTOR at his own expense.
2. The CONTRACTOR shall notify the CA in writing after each trimming cycle is completed. The CA shall complete inspection within twenty-eight (28) calendar days after receipt of the written notification.
3. The CA shall have sole authority to determine acceptability of the CONTRACTOR's work.

ADDITIONAL SERVICES

In the event additional palm work (Pruning, Stump Removal, and/or Palm Removal) is authorized by the CA, services shall be provided in accordance with these specifications. Additional work shall be billed separately from the contract and in accordance with the bid prices provided on Exhibit A.

1. PALM pruning service shall include, but not be limited to:
 - Removal of all dead, dying, dry fronds and broken stubs; removal of flowers, inflorescence, fruits, and nuts at any stage of growth; clearance of all excessive growth, including all epiphytes and vines; provide clearance away and/or overhead clearance of obstructing fronds to buildings, utilities, flag poles, driveways, street lights, fence line, private property, vehicle/pedestrian traffic areas and other obstacles.
 - The CONTRACTOR shall make clean cuts close to the trunk without injuring the trunk and/or remaining fronds.
 - Removal of all hanging fronds caused by the CONTRACTOR's damage to the base of leafstalks.
 - The CONTRACTOR shall refer to Exhibits 1, 2, 3, and 4, drawings showing trimming requirements.
 - The CONTRACTOR shall collect and remove all palm trimmings and debris on the same day as it is generated. Trimmings and debris shall not be left unattended at the work site by the CONTRACTOR. Trimmings and debris shall be disposed of at the recycling facilities or disposal sites that meet requirements of all governmental agencies. There shall be no

deviation pertaining to removal of trimmings and debris.

2. Stump removal shall include, but not be limited to, all palm debris. Stump and all exposed surface roots shall be ground six (6) inches to twelve (12) inches below ground level. All wood chips shall be removed and replaced with top-soil spread level with the surrounding grade.
3. Warranted palm removal due to the death of a palm that poses a potential risk to the public shall include, but not be limited to, all palm debris and exposed surface roots that shall be ground six (6) inches to twelve (12) inches below ground level. All wood chips shall be removed and replaced with Top-Soil spread level with the surrounding grade.

CONTRACTOR shall bill additional work separately from the contract. Unless the CONTRACTOR is given a separate purchase order authorizing the CONTRACTOR to perform additional work, the DOE shall not be held responsible for payment of any such work performed by the CONTRACTOR.

EMERGENCY SERVICE OR AUTHORIZED EXTRA WORK

Emergency service required between regular palm trimming services shall be rendered within twenty-four (24) hours of notification (non-work days excluded). The CONTRACTOR shall provide copies of the past trimming history upon request by the CA. As emergency work progresses/is completed, the CONTRACTOR must notify the CA daily of the status of the work and estimated completion times.

The DOE reserves the right to have emergency work performed on the weekends or after normal operating hours. Whenever the DOE exercises this right, the DOE will compensate the CONTRACTOR only for the negotiated unit prices according to the specific type of palm work (which includes all costs). The CONTRACTOR shall be responsible for all other costs as if the work was performed during normal working hours.

CONTRACTOR shall bill emergency services separately from the contract. Unless the CONTRACTOR is given a separate purchase order authorizing the CONTRACTOR to perform emergency work or authorized extra work, the DOE shall not be held responsible for payment of any such work performed by the CONTRACTOR.

SAFETY PRECAUTIONS

The CONTRACTOR shall perform the contract work to meet all accepted standards for safe practices. The CONTRACTOR shall comply with all local, county, state, federal, or other legal requirements including, but not limited to, full compliance with the terms of the applicable Federal and State Occupational Safety and Health Act Safety Orders.

All safety requirements shall be exercised including, but not limited to, the use of safety harness, lanyards, safety guide ropes, chain or cable reinforced climbing belts, scabbards to hold cane knives when not held in the climber's hand, hardhats, shoes, eye protectors, traffic cones, signs, flags, and ropes to direct pedestrians and vehicles from hazards and rope rigging to safely lower heavy trimmings. Under no circumstances shall trimmers stick cane knives into the trunk of trees. THE CONTRACTOR SHALL NOT USE SPIKES ON ANY PALM, with the exception to trees or palms that may be designated for removal.

The CONTRACTOR shall provide **effective** safety precautions, signs, barricades, and other devices necessary for the safety of the school and general public. Effective means of pedestrian and vehicular traffic shall be instituted on every worksite where necessary and shall follow current Department of Transportation Standards and Guideline Work Zone Traffic Controls, or applicable state/local laws and regulations.

The CONTRACTOR shall take precautions necessary to protect persons or property against injury or damage and be responsible for any such damage, or injury that occurs as a result of their fault or negligence. Whenever maintenance and repair work is performed during school hours and the site is

accessible to school children, the CONTRACTOR shall not perform work until all safety type barricades are in place. The CONTRACTOR shall comply with all applicable safety regulations promulgated by the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), and other governmental agencies.

DAMAGES

In the event any accident, injury, or property damage arises from the performance of work, the CONTRACTOR shall immediately notify the CA and/or authorized representative and shall immediately locate the owner of any damaged property. If the CONTRACTOR cannot immediately locate the owner of any damaged property, a note shall be left informing the owner of financial responsibility and the method of contacting the CONTRACTOR for settlement of the damaged property. Any damage to buildings, structures, vehicles, irrigation systems, plants, all other non-contracted items in the perimeter area and adjoining properties shall be repaired and/or replaced by the CONTRACTOR at CONTRACTOR's own expense and to the satisfaction of the CA and the injured party(s).

In the event of a CONTRACTOR causes an outage or damage of any type to utility lines or equipment, the CONTRACTOR shall:

- a. Suspend all work, ensure that the job site is safe, attend to any injuries, and notify the appropriate utility company immediately. If utility lines or equipment are down, the CONTRACTOR shall not handle or touch the downed equipment and cone off and leave the appropriate personnel on the site to ensure that the public is safe from electrical contacts and hazards.
- b. Immediately notify the CA and/or authorized representative of the location of the outage and the extent of the damage.
- c. Suspend all work until the CA and/or authorized representative obtains a clearance from the appropriate parties involved.

Only vehicles used to access palms for trimming purposes, dump trucks and chippers, shall be allowed to drive on lawn areas and walkways. No other equipment or vehicles of any type, including pickup trucks, shall be allowed on lawn areas and walkways. The CONTRACTOR shall inspect the areas prior to driving onto lawns to determine locations of sprinkler systems and any other above and/or below-grade utilities. The CONTRACTOR shall not drive on wet or muddy lawns where it is likely to cause ruts in the lawns. Ruts are considered "damage to the lawn" and shall be resolved by the CONTRACTOR at his own expense and to the satisfaction of the CA and the injured party(s). Vehicles shall not be driven over above-grade palm roots and no closer than ten (10) feet from the base of the tree trunk.

CORRECTIVE ACTION

The CONTRACTOR shall be responsible to correct all deficiencies and/or discrepancies of all palms trimmed per this contract within one (1) week of notification. This corrective action shall include, but not limited to, removal of dead, dying, dried, damaged fronds; cracked/hanging fronds; removal of flowers and fruits. All hanging palm fronds, caused by the CONTRACTOR's damage to the base of leafstalks, shall be removed by the CONTRACTOR.

SECURITY REQUIREMENTS

The CONTRACTOR shall be aware of heightened security conditions at all schools covered by this contract and report any suspicious activity or obvious breach of security in relation to or in the course of their work at any of the school facilities; this shall be reported to the CA with as much detailed information as possible. The CONTRACTOR shall keep their work areas closed and secure: before, during, and after performing work.

The CONTRACTOR is required to follow the school's procedure for visitors, which include reporting to the

school office upon daily arrival. At the time of initial notification, the school shall provide their requirements by indicating when (time) and where (location) they want the CONTRACTOR to trim.

The CONTRACTOR shall schedule and coordinate maintenance service, emergencies or repair work at school facilities in advance before work can commence. A letter from DOE to the respective school(s) may be required. Upon award of the contract and prior to the start of work, the CONTRACTOR may be required to submit to the DOE a list of personnel assigned to this contract, submitted on its company letterhead.

The CONTRACTOR's vehicles and personnel shall be properly identified via use of company signage/logos, uniforms, name tags, or identification cards.

Smoking, drinking, or use of any other tobacco, alcoholic, or illegal substances is prohibited within school property at all times.

REMOVAL OF CONTRACTOR'S EMPLOYEES

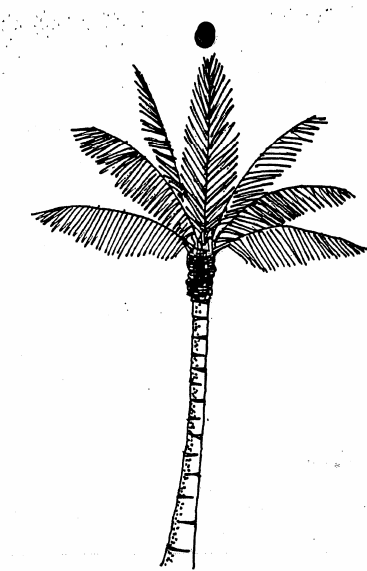
Any person employed by the CONTRACTOR or by any Subcontractor who, in the opinion of the CA and/or authorized representative, does not perform their work in a proper and skillful manner or is intemperate, disorderly, behaves in an uncivilized manner, offends or harasses state employees, officials, students, or offends the public while performing the work or while at the job site shall, at the written request of the CA and/or authorized representative, be removed forthwith by the CONTRACTOR or the Subcontractor employing such person and shall not be employed again in any portion of the work without the approval of the CA and/or authorized representative. Should the CONTRACTOR fail to remove such person or persons as required above or fail to furnish suitable and sufficient personnel for the proper execution of the work, the State shall reserve the right to terminate the contract immediately.

In the event the contract is terminated prior to the end of the contract period, any loss of anticipated revenue or profits from such termination shall not constitute grounds for equitable adjustment under the contract.

Further, if the contract is terminated immediately as described above, the CA shall reserve the right to suspend the CONTRACTOR from bidding on any or all State bids for a period not to exceed three (3) months. The State shall also reserve the right to proceed against the CONTRACTOR's security for faithful performance of the contract. The State may also utilize all other remedies as provided by law.

EXHIBIT 1:

COCONUT, QUEEN, ALEXANDER PALMS, AND SIMILAR PALMS

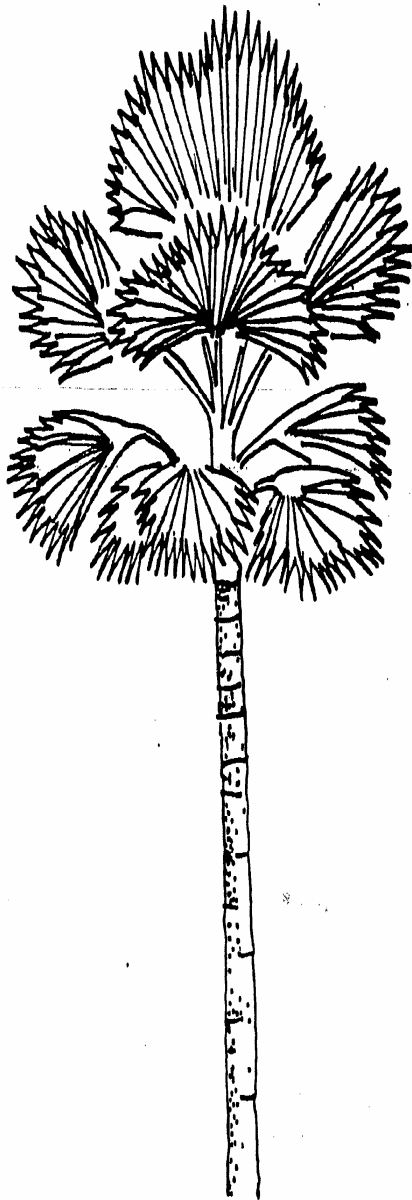


Palm trimming shall include, but is not limited to:

- Protection of crown and all other fronds to remain from injury.
- Removal of all dead, dying dry fronds, and broken stubs; removal of flowers, inflorescence, buds nuts, and fruits at any stage of growth, including all epiphytes, and vines; removal of obstructing fronds away from driveways, street lights, walkways, fence lines; clearing growth to provide adequate frond containment away from buildings, utilities and other obstacles.
- Trees shall not be over-trimmed, resulting in fronds appearing like feathers in the sky. Short stubs shall be left on the uppermost whorl of trimmed fronds to protect the heart and to minimize excessive drooping of remaining fronds on all trees.
- CONTRACTOR shall make clean cuts close to the trunk without injuring the trunk and/or remaining fronds and remove all hanging fronds caused by the CONTRACTOR's damage to the base of leafstalks.
- CONTRACTOR shall preserve fibrous growth between fronds.
- Coconut Palm only- CONTRACTOR shall exercise care using climbing spikes to minimize injury to trunk. All other similar palms- use of climbing spikes is NOT allowed.

EXHIBIT 3:

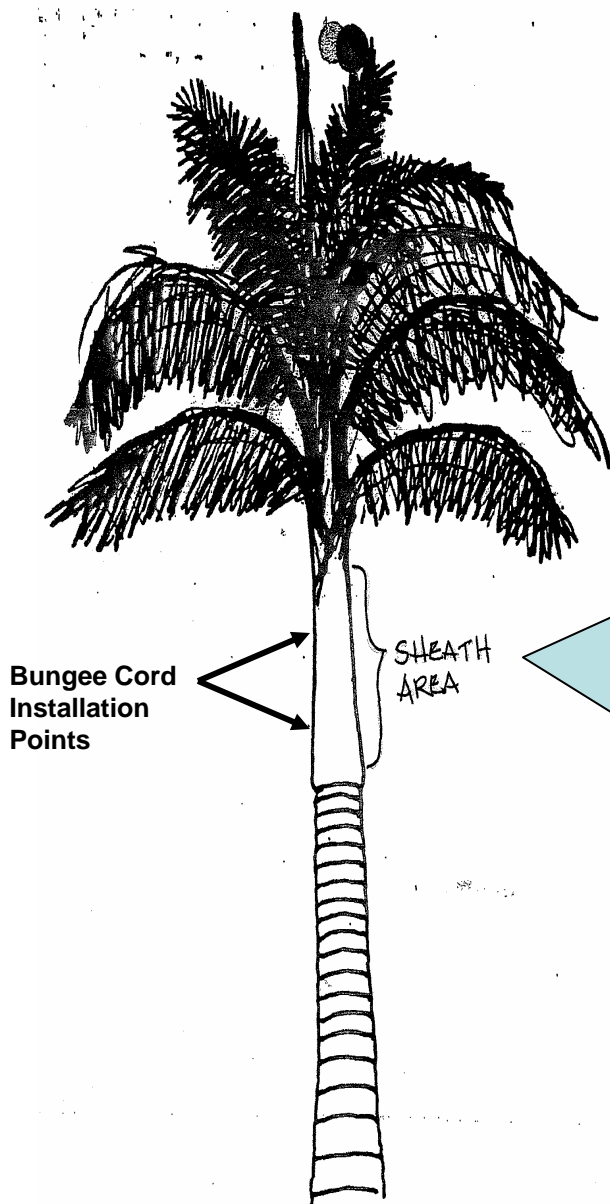
LOULU, **WASHINGTONIA** **PALMS, AND SIMILAR** **PALMS**



Palm trimming shall include, but is not limited to:

- Protection of crown and all other fronds to remain from injury.
- Removal of all dead, dying, dry fronds, and broken stubs; removal of flowers, inflorescence, buds, nuts, and fruits at any stage of growth, including all epiphytes, and vines; removal of obstructing fronds away from driveways, street lights, walkways, fence lines; clearance of growth to provide adequate frond containment away from buildings, utilities and other obstacles.
- CONTRACTOR shall make clean cuts close to the trunk without injuring the trunk and/or remaining fronds and remove of all hanging fronds caused by the CONTRACTOR's damage to the base of leafstalks.
- Preservation of fibrous growth between fronds.
- Use of climbing spikes is **NOT** allowed.

EXHIBIT 4:
ROYAL PALM, AND
SIMILAR
PALMS



Palm trimming shall include, but is not limited to:

- Removal of all dead, dying dry fronds, stubs, and loose sheath.
- Removal of buds, inflorescence, buds, fruits, and nuts at any stage of growth.
- Removal of all fronds growing against, into or on buildings and utilities by tip pruning individual fronds so the bases of leafstalks are retained to protect the heart of the palm.
- Removal of all hanging fronds caused by the CONTRACTOR's damage to the base of leafstalks.
- Palms shall not be over-trimmed, resulting in fronds appearing like feathers in the sky. Short stubs shall be left on the uppermost whorl of trimmed fronds to protect the heart and to minimize excessive drooping of remaining fronds on all trees.
- Nesting birds within the treetops shall not be removed or killed.
- Use of climbing spikes is not allowed.

Special Instructions to CONTRACTOR:

- Upon completion of each Royal Palm trimming work, the CONTRACTOR shall at his own expense, provide and install at least **two (2) elastic "bungee" cords**, firmly secured around the mid-section of the sheath area for each palm; so as to maintain the security of the sheath material during and before the next trim cycle period.
- The CONTRACTOR shall maintain the elastic cords between trim cycles, and replace each cord annually within the duration of the contract, at the CONTRACTOR's own expense.

Kauai District Schools, Palm (12/09 significant) Inventory for Contract #

IFB: D10-148

Inspection Form Attachment, Coconut & Palm Trimming Services for Various District Schools

Trim Date (check one): 1st Trim Cycle- _____ 1st Trim Cycle- _____ 1st Trim Cycle- _____

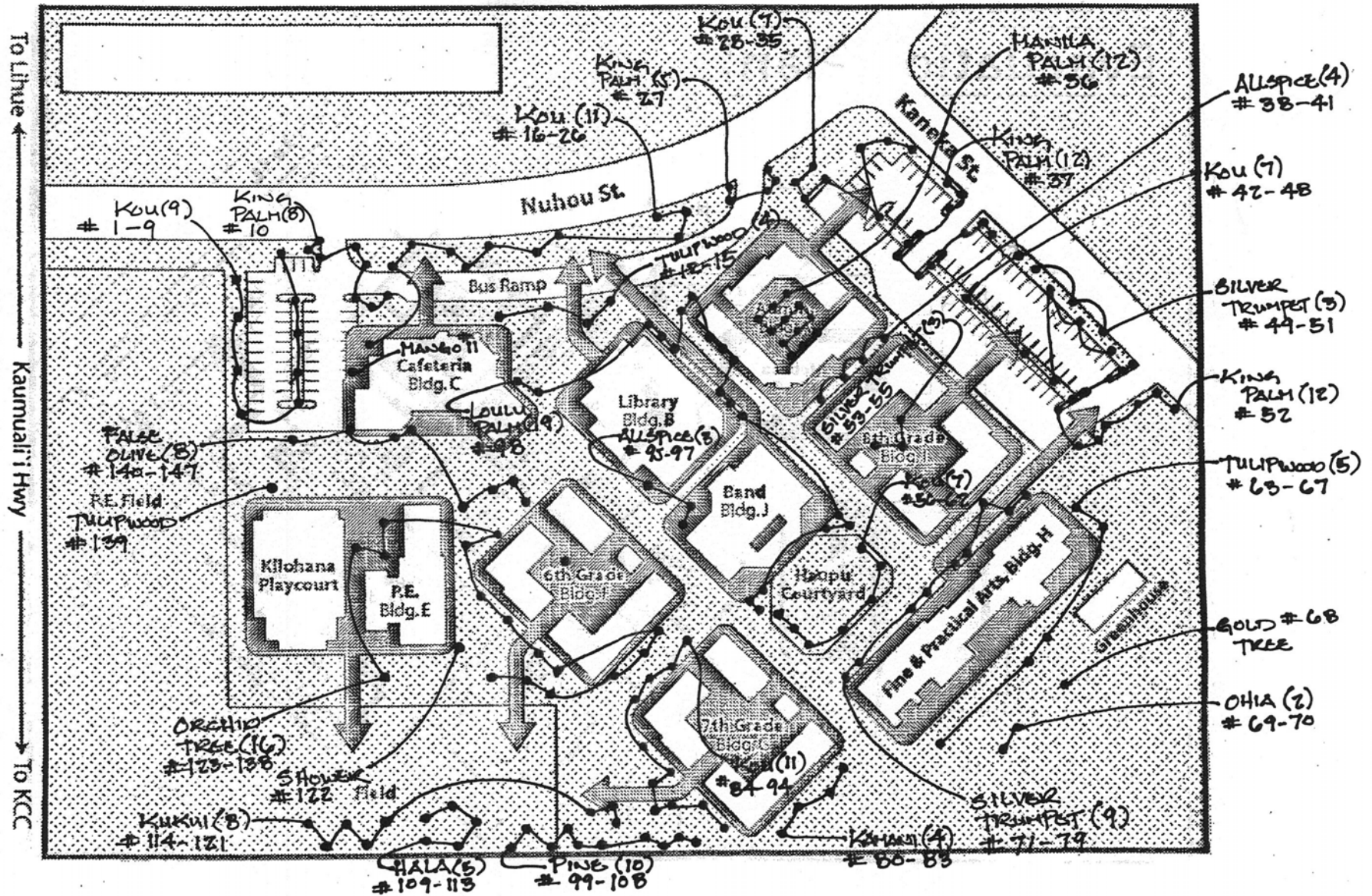
2nd Trim Cycle- _____ 2nd Trim Cycle- _____ 2nd Trim Cycle- _____

SCHOOL		COCONUT PALM	ROYAL PALM	KING PALM	LOULU PALM	Tree Numbers	Note to Contractor: The Principal or designated party must sign a copy of this form to verify initial completion of work. This form with the original signatures must be returned with the Contractor's invoice for payment.	
District I, II, & III: East, West, & Central Kauai Complex Areas							SIGNATURE	DATE
1	Hanalei Elementary 5-5414 Kuhio Hwy Hanalei, 96714	1				45		
					25	2 - 25; 43		
2	Kilauea Elementary 2440 Kolo Road Kilauea, 96754	2				25, 31		
					1	24		
3	Kapaa High 4695 Mailihuna Rd. Kapaa, 96746	7				28, 84, 85, 86, 87, 88, 109		
					5	51(5)		
4	Kapaa Middle 4867 Olohana Road Kapaa, 96746				44			

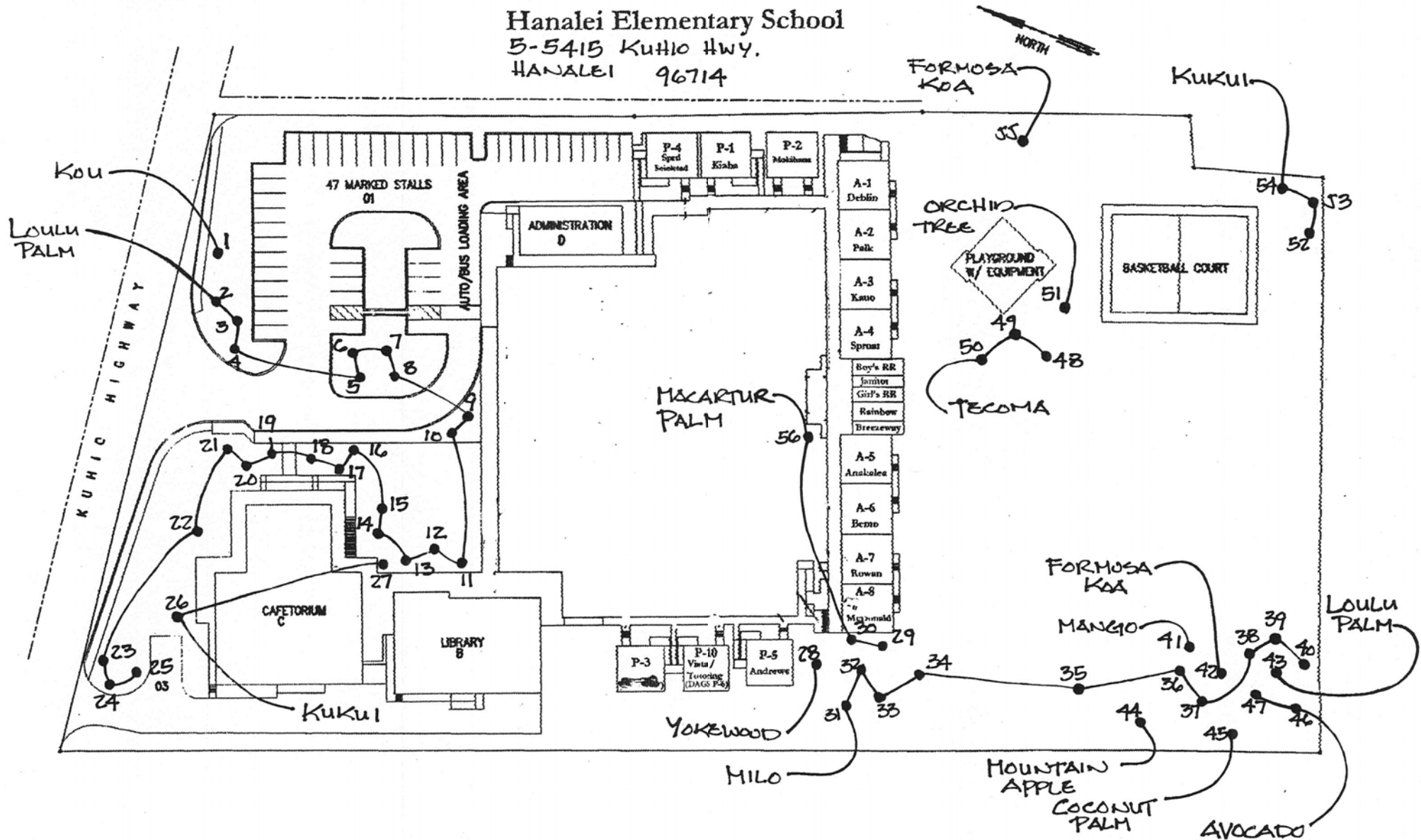
SCHOOL		COCONUT PALM	ROYAL PALM	KING PALM	LOULU PALM	Tree Numbers	Note to Contractor: The Principal or designated party must sign a copy of this form to verify initial completion of work. This form with the original signatures must be returned with the Contractor's invoice for payment.	
District I, II, & III: East, West, & Central Kauai Complex Areas							SIGNATURE	DATE
5	Kapaa Elementary 4886 Kawaihau Road Kapaa, 96746		2			26, 27		
					10	28, 29, 30, 31, 32, 33, 34, 35, 36, 37		
6	Waimea High 9707 Tsuchiya Road Waimea, 96796		1			87		
					11	38(11)		
7	Kalaheo Elementary 440 Maka Road Kalaheo, 96741		1			3		
8	Chiefess Kamakahelei 4431 Nuhou St. Lihue, 96766			25		10(8); 27(5); 52(12)		
					19	98(19)		
9	King Kaumuali'i Elementary 4380 Hanamaulu Road Lihue, 96766				3	1, 2, 3		

SCHOOL		COCONUT PALM	ROYAL PALM	KING PALM	LOULU PALM	Tree Numbers	Note to Contractor: The Principal or designated party must sign a copy of this form to verify initial completion of work. This form with the original signatures must be returned with the Contractor's invoice for payment.	
District I, II, & III: East, West, & Central Kauai Complex Areas							SIGNATURE	DATE
	Lihue, 96766							
Subtotal Palms		10	4	25	118			
Total Palms		157						

Chiefess Kamakahekei Middle
4431 Nuhou St.
Lihue, 96766

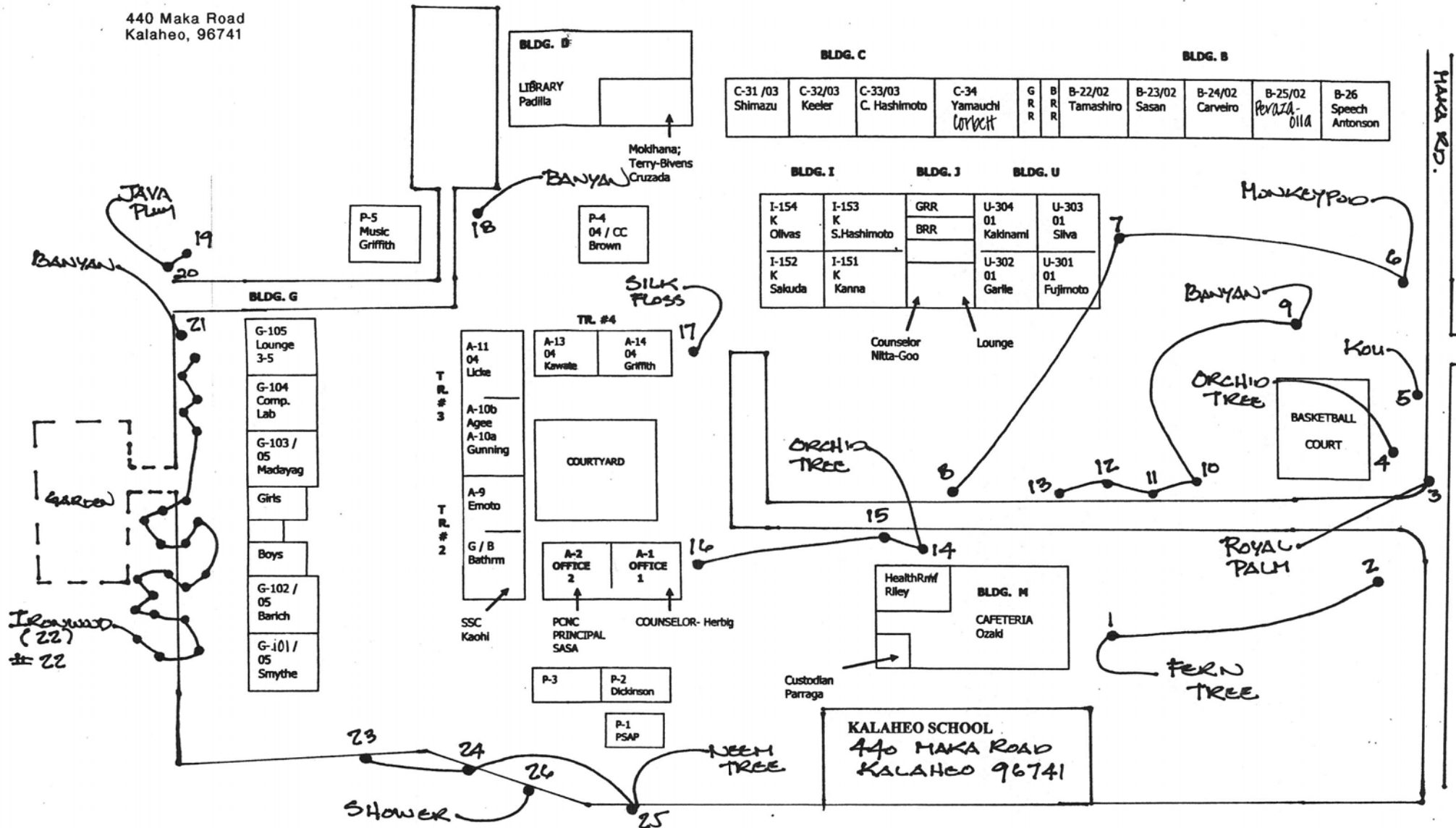


Hanalei Elementary School 5-5415 KUHIO HWY. HANALEI 96714



Kalaheo Elementary

440 Maka Road
Kalaheo, 96741

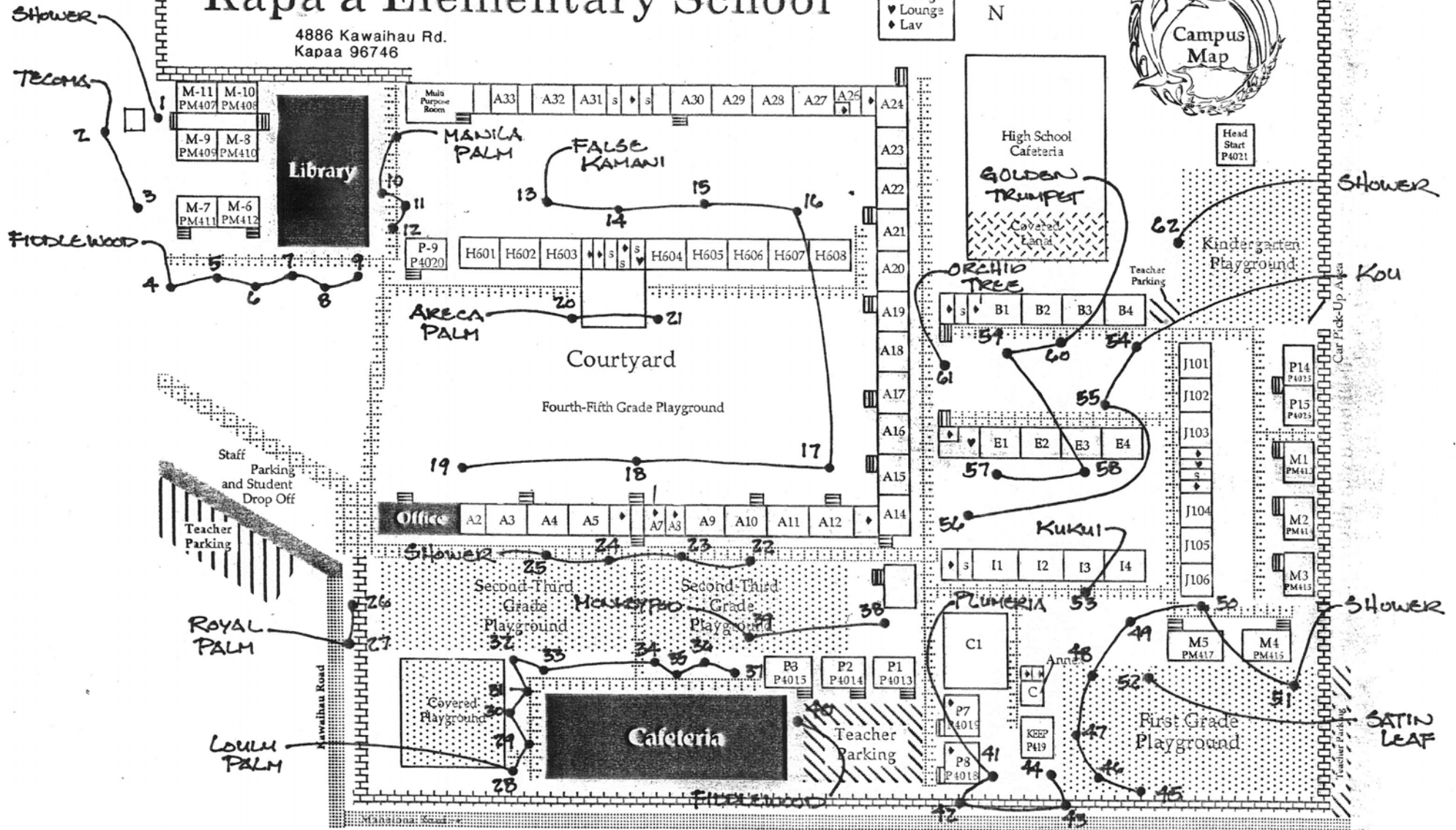


Kapa'a Elementary School

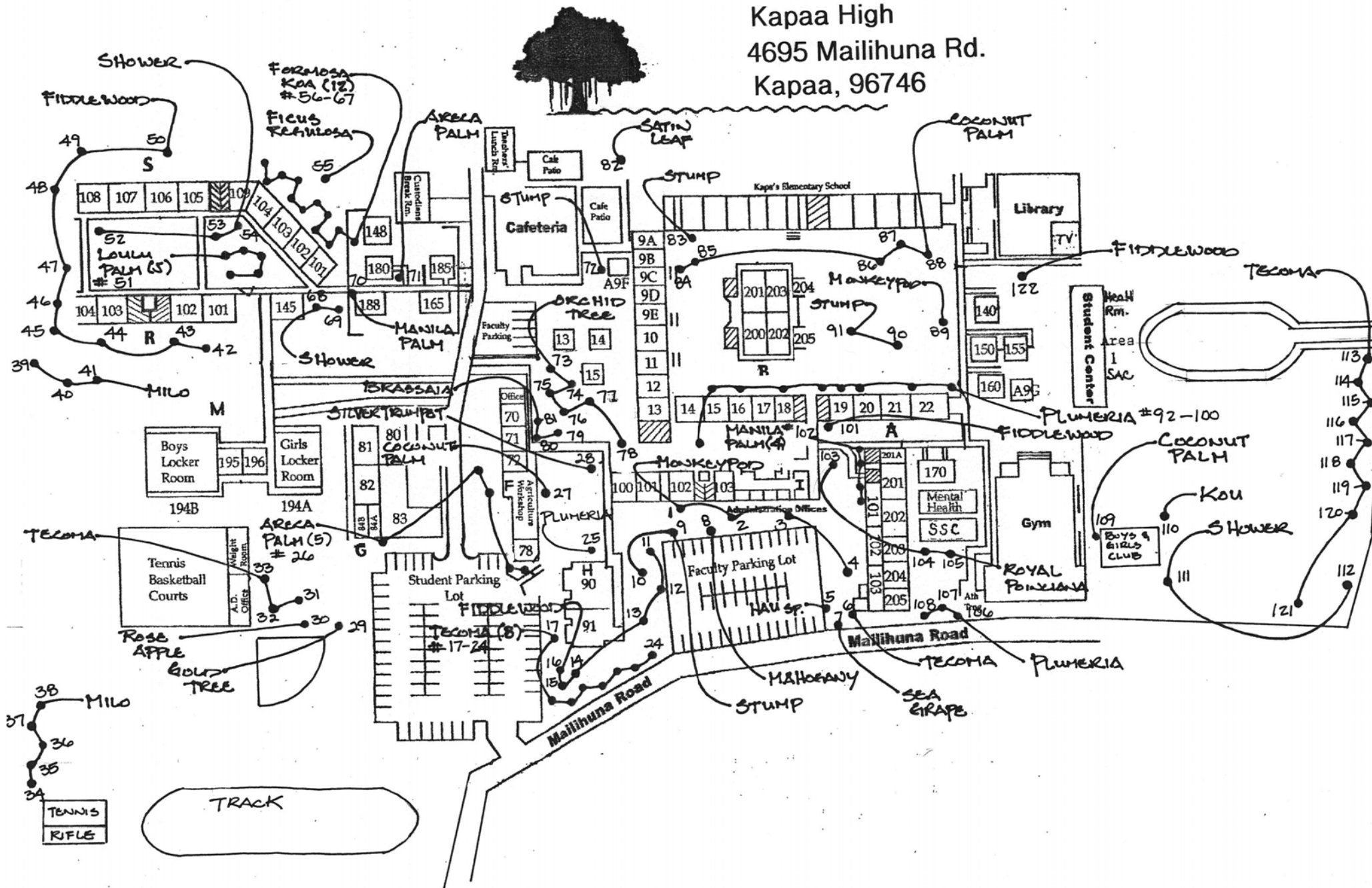
4886 Kawaihau Rd.
Kapaa 96746

KEY
S Storage
♥ Lounge
♦ Lav

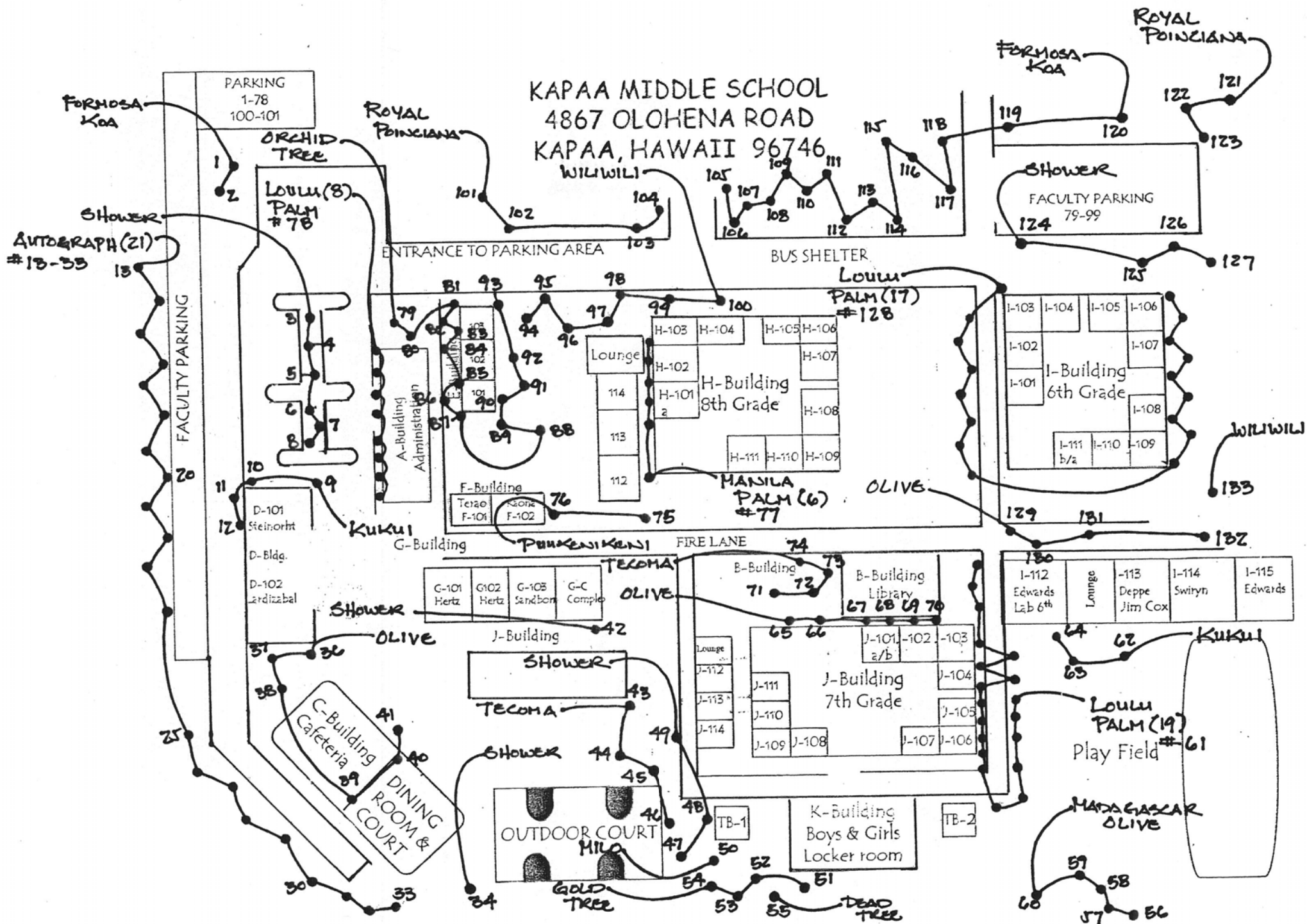
↑
N



Kapaa High
4695 Mailihuna Rd.
Kapaa, 96746

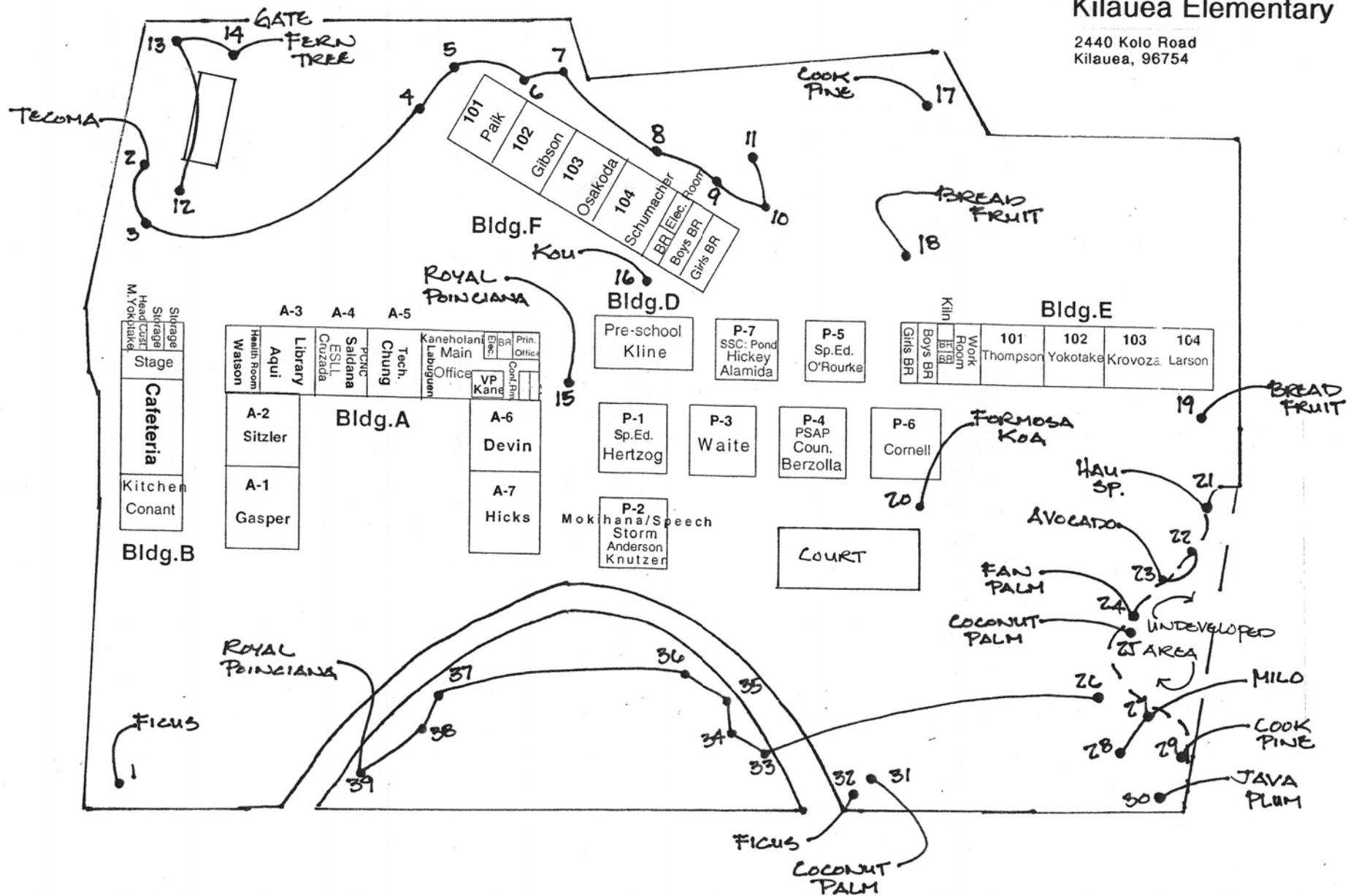


PARKING
1-78
100-101

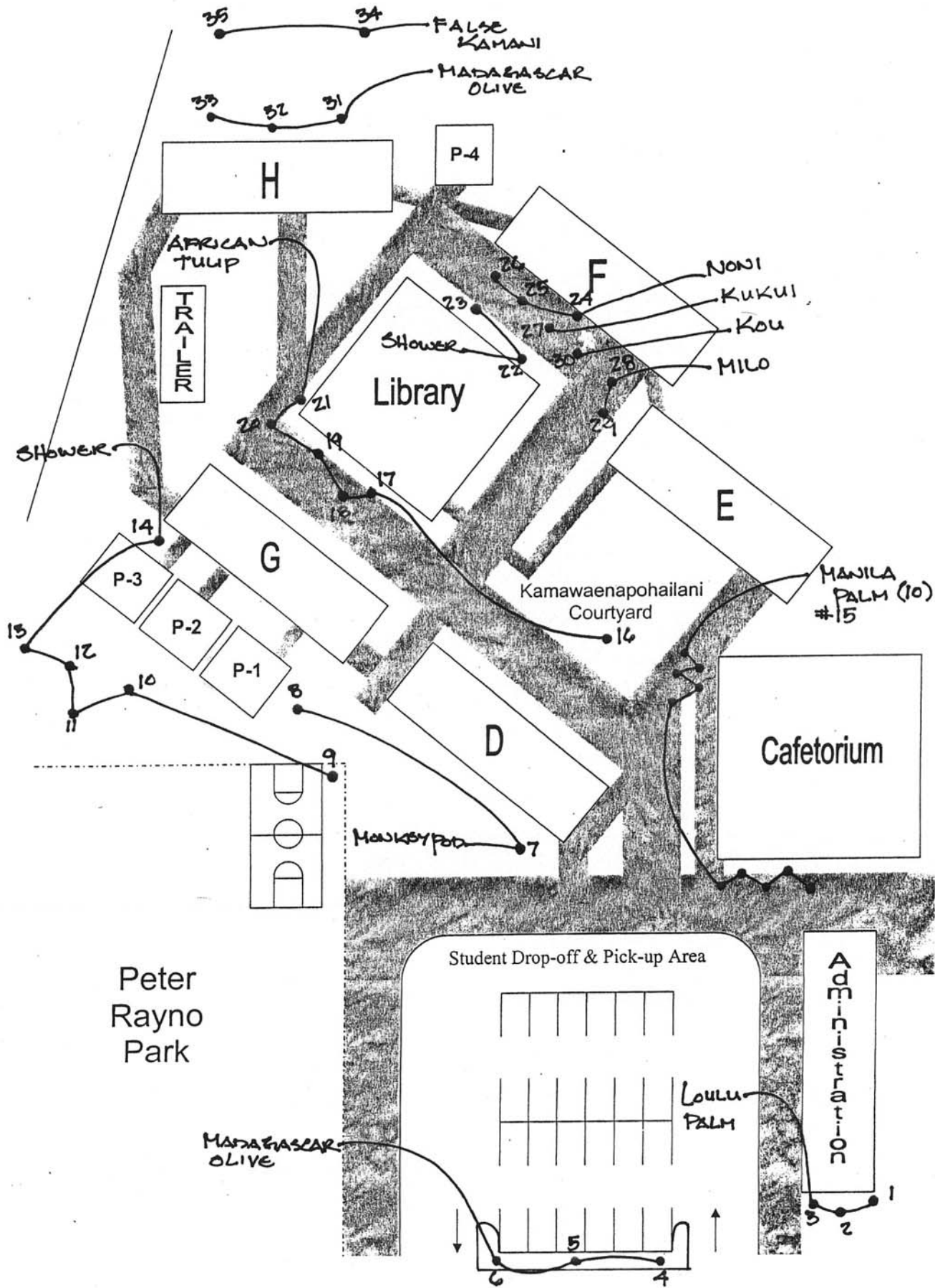


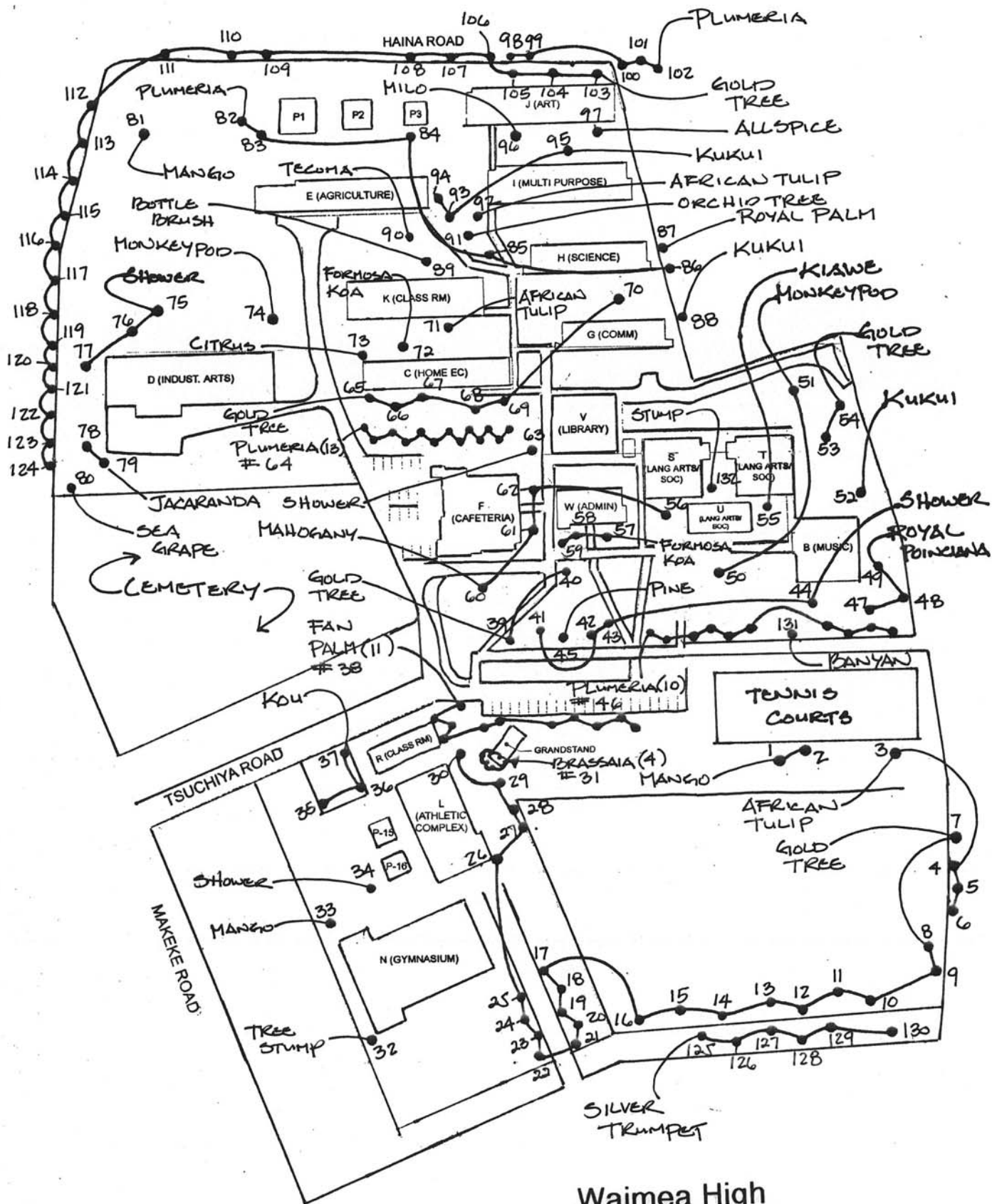
Kilauea Elementary

2440 Kolo Road
Kilauea, 96754



King Kaumualii Elementary
4380 Hanamaulu Rd.
Lihue, 96766





Waimea High

9707 Tsuchiya Rd.
Waimea, 96796

SPECIAL CONDITIONS

GENERAL INFORMATION

1. Addenda and Interpretations

Discrepancies, omissions, or questions related to this solicitation shall be communicated in writing to the DOE via facsimile at (808) 675-0133 or e-mail to gwen_nakamoto@notes.k12.hi.us for interpretation and must be received no later than **seven (7)** calendar days prior to the date fixed for bid opening.

Interpretation(s) if any and any supplemental instructions will be in the form of written addenda that will be made available to all prospective and pre-registered bidders prior to the date fixed for the opening of bids. Failure of any bidder to receive any such addenda or interpretations shall not relieve the bidder of any obligation under this solicitation. All addenda issued shall be incorporated into the resulting contract.

2. Scope

Work under this agreement shall consist of providing palm trimming services for Various Schools on Kauai, Districts I (East Complex), II (West Complex), and III (Central Complex) and other Various Areas and shall be in accordance with these Special Conditions, the Specifications, and the attached General Conditions.

3. Contract Administrator

For the purpose of this contract, Mr. Charles Kagawa, Program Manager or his successor, is designated Contract Administrator (CA). He can be contacted at telephone (808) 586-3452, facsimile (808) 586-3468, or via e-mail at charles_kagawa@notes.k12.hi.us.

The CA is responsible for:

- the terms, conditions, quantities, specifications, scope of services, other contract terms, and all decisions relating to the contract;
- monitoring the CONTRACTOR's work, documenting that CONTRACTOR maintains the required insurance coverage (if applicable), resolving contract disputes and discrepancies, evaluating the work of the CONTRACTOR, assuring the services or goods are delivered as required in the contract, and processing payment for services rendered; and
- notifying PCB in the event of change in scope of work, change in the performance period, increase or decrease in total compensation, and/or changes in any other contract terms.

Notwithstanding the responsibilities set forth hereinabove, any coordination of services falling outside those articulated above shall remain with the head of the purchasing agency, as set forth in the attached General Conditions (see General Conditions, paragraph 1, entitled "Coordination of Services by the STATE.>").

4. Contract Period

This contract shall commence upon full execution of the contract and shall end on June 30, 2011, subject to availability of funds as specified in the General Conditions.

Beyond June 30, 2011, this contract may be extended for not more than two (2) additional one (1)-year periods, upon mutual written agreement of the parties, prior to expiration. As each option(s) to extend is mutually agreed upon, the CONTRACTOR shall be required to execute a supplement to the contract for each additional period. The contract price for the extended period shall remain the same or lower than the initial contract price, subject to any price adjustment allowed by the contract. The actual schedule for the next round of tree trimming shall be established by the CA at a later date.

BIDDER INFORMATION

5. Bidder's Authority to Bid

The DOE will not participate in determinations regarding a bidder's authority to perform a service. If there are any questions or doubts regarding a bidder's right or ability to render a service, the Bidder should resolve those issues prior to submitting a bid. If the Bidder's offer meets specifications and is acceptable and the bid price submitted in the lowest bid, the contract will be awarded to that bidder.

6. Bidder Qualification

In addition to meeting legal and any other requirements of this solicitation, Bidder must meet these qualifications to be considered for award.

A. Experience

Bidder shall have a minimum of five (5) consecutive years of experience (immediately prior to bid opening date) in providing palm trimming services. The number of years of experience shall be provided on Offer Page, OF-4. Bidders must be able to provide documentation of tree trimming experience to substantiate their claim of experience.

B. License/Permit

At the time of bidding and throughout the contract period, Bidder must have a current C-27 or C-27-B tree trimming license issued by the Department of Commerce and Consumer Affairs (DCCA). Bidder shall provide the license number on the appropriate offer page OF-4. Bidder shall provide all necessary documentation (e.g., copy of license) to substantiate compliance with this requirement. See SPECIFICATIONS for required certificates, licenses, documents, etc. to perform services as specified.

C. Personnel

1. Certified Arborist.

At the time of bidding and throughout the contract period, Bidder must have competent, trained, and physically qualified personnel designated as follows:

At least one (1) qualified arborist shall maintain a current certification by the International Society of Arboriculture (ISA) throughout the contract period. The qualified Arborist shall have a minimum five (5) year ISA certification and provide a copy of their current and previously expired ISA certificates with the bid to fulfill this requirement. The Arborist shall provide the certification number and date of expiration on Offer Page, OF-4, for approval by the Officer-in-Charge after bid opening.

The Bidder shall have available at least one (1) employee who is a qualified line-clearance arborist and who is able to respond within twenty-four (24)-hours notice and as needed to perform any and all line-clearance work, and to resolve questions regarding the need for line-clearance work. All qualified line-clearance arborists shall meet the requirements of ANSI Z133.1-2006.

2. Point-of-Contact

The DOE's point-of-contact (POC) for this contract shall be **based in Kauai** and available during regular business hours, Monday – Friday, from 7:45 a.m. to 4:30 p.m., and shall be capable of answering questions related to the contract, including resolving problems and providing assistance. Telephone number of office and cell or pager number shall be furnished on the appropriate offer page.

Telephone answering machines are not acceptable during normal business hours. An answering service is acceptable after normal business hours provided a response is made within two (2) hours of the initial call.

D. Equipment and Employees

Bidder shall have the necessary equipment and sufficient employee workforce to perform and complete the work specified herein within the period specified. Bidder shall provide the information requested on the Offer Form, OF-5, regarding employee workforce and inventory of equipment. The DOE will use this information to determine whether the Bidder is able to perform the work within the contract time allowed. The DOE shall also take into consideration the Bidder's current contracts at the time of bid submittal to determine whether Bidder has adequate equipment and personnel to perform the work as specified within the time period specified.

Award will not be made to any bidder failing to meet ALL of the above qualifications. These requirements must remain in effect during the entire contact period. Failure to maintain these requirements shall result in rejection of bid and cancellation of award.

E. For Bidders With Multiple DOE Contracts

Any bidder holding current tree trimming contract(s) with the DOE and who is the apparent low bidder specified herein must comply with the following requirements:

1. A qualified arborist must be on the job site(s) at all times (i.e., multiple contracts on the same trimming cycle require multiple qualified arborists). Bidder shall submit names of qualified arborists for each contract.
2. Vendors with multiple contracts that require the specified services of each contract performed simultaneously shall do the specified services of each contract simultaneously, and the contracts shall **not** be worked sequentially.

These requirements must remain in effect during the entire contact period. Failure to maintain these requirements shall result in rejection of bid and cancellation of award.

7. References

Bidder shall provide the names of at least three (3) references with whom Bidder has done business in the past and who can attest to the quality level and reliability of all aspects of Bidder's work and service on Offer Page, OF-5. The DOE reserves the right to contact these references to verify Bidder's quality level and reliability.

8. Site Inspection

Prior to submittal of a bid, Bidder must inspect the project sites to become thoroughly familiar with existing conditions, rules and regulations, and the extent and nature of work to be performed. Submission of a bid shall be evidence that the Bidder understands the scope of the project and shall comply with all requirements stated herein, if awarded the contract. Bidders must contact the CA to arrange an inspection visit.

9. Responsibility of Bidders

Bidder is advised that if awarded a contract under this solicitation, Bidder must furnish proof of compliance with the requirements of §103D-310(c), HRS as a pre-requisite to receiving a contract:

1. Chapter 237, tax clearance;
2. Chapter 383, unemployment insurance;
3. Chapter 386, workers' compensation;
4. Chapter 392, temporary disability insurance;
5. Chapter 393, prepaid health care; and
6. Chapter 103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

Bidder should refer to the Contract Award provision for further information regarding the above-mentioned requirements.

BID PREPARATION

10. Offer Page OF-1

Bidder is requested to submit the bid under the company's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, and to indicate exact legal name in the appropriate space on Offer Page, OF-1. Failure to do so may delay proper execution of the contract.

The authorized signature on the Offer Page, OF-1, shall be an original signature in ink. If unsigned or if the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Bidder's intent to be bound.

11. Taxable Transaction

Unless the HRS exempts a person from paying the applicable general excise tax, work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS and Chapter 238, HRS, where applicable. Both out-of-state and Hawaii-based companies are advised that the gross receipts derived from this contract are subject to the general excise tax imposed by Chapter 237, HRS, at the current rate and, where applicable, to tangible property imported into the State of Hawaii for resale, subject to the applicable use tax imposed by Chapter 238, HRS.

The "State of Hawaii Information on Hawaii State Taxes Administered by the Department of Taxation," Publication-1 (Revised 2005) is included herein by reference and available online at <http://www.state.hi.us/tax/pubs/pub1.pdf>.

12. Tax Exempt Transaction

If, however, a bidder is a person exempt by the HRS from paying the general excise tax and therefore not liable for the taxes on this solicitation, Bidder shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

For evaluation purposes, pursuant to §103D-1008, HRS, a tax-exempt bid submitted in response to a solicitation shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

13. Bid Price

Bid prices shall include all costs for labor, equipment, materials, profit, transportation, overhead, all applicable taxes, any reimbursement costs, and any other incidental and operational expenses incurred to provide services as specified herein. Bid prices shall be the all-inclusive cost to the DOE; no other charges will be honored.

Bidder must bid on all items to qualify for award. In the event the bid price(s) submitted exceed available funds, the DOE reserves the right to delete any item(s) in a school or any school(s) from the offer.

14. Bidder Information

Bidder shall provide information regarding its office location and DOE's point-of-contact on Offer Page, OF-4.

15. License/Permit

License number shall be provided on Offer Page, OF-4. Bidder shall also submit a copy of the license with the bid.

16. Labor Costs

Bidder must indicate on Offer Pages, OF-4, the percentage of its bid price that represents labor costs. This information will be used in calculating price adjustments, if applicable.

17. References

Bidder shall list on Offer Page, OF-5, at least three (3) companies or government agencies for whom tree trimming services were or is being provided. The DOE reserves the right to contact the references submitted and to reject the bid of any bidder whose performance on other jobs of this nature has been unsatisfactory.

18. List of Current Contracts

Bidder shall provide with the bid, a list of all the current contracts that the Bidder is actively servicing at the time of bid submittal.

19. List of Employees

Bidder shall provide with the bid, a list of all employees who will be servicing this contract and the type of work each employee will be performing (e.g. Tree Trimmer-Truck Driver, Tree Trimmer). State of Hawaii Class Specifications for Tree Trimmer and Tree Trimmer-Truck Driver Classification are attached.

20. List of Equipment

Bidder shall provide with the bid, a list of all the equipment to be used during the performance of the work specified.

21. Employee Wages

Bidder shall provide with the bid, information regarding employee's wage payments. The information shall be used to verify that bidder has included the appropriate public employee's wages into the bid price.

22. Wage Certificate

Bidder shall complete and submit a *Wage Certificate* by which the Bidder certifies that services required will be performed pursuant to §103-55, HRS. Bidder shall refer to the *Wage Certificate* clause for additional information regarding this requirement. Bidder is also advised that although Item 1 of the *Wage Certificate* is not applicable to this solicitation since there are no public sector employees performing work similar to the requirements herein, Item 1 of the certificate applies and therefore submission of the *Wage Certificate* is required.

Accordingly, Bidder should consider the public sector wage rates and/or benefits when preparing this bid.

23. Liability Insurance

Work included under this agreement requires the provision of liability and property damage insurance, to remain in full force and effect during the life of this contract. Bidder shall refer to *Liability Insurance* clause for additional information regarding this requirement.

Accordingly, Bidder should consider these insurance requirements when preparing this bid. Bidder shall provide insurance information as requested on Offer Page, OF-5.

24. Offer Guaranty

An offer guaranty (bid bond) is not required for this IFB.

BID SUBMITTAL

25. Submission of Bid

Bids shall be submitted in a sealed envelope identified with the IFB number, and the name and address of the bidder.

Bids shall be received at the DOE, Procurement and Contracts Branch, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797, no later than the date and time stated on the cover page of the IFB. Timely receipt of offers shall be evidenced by the date and time registered by PCB's time stamp clock. Bids received after the deadline shall be returned unopened.

Submission of a bid shall constitute an incontrovertible representation by the Bidder of compliance with every requirement of this IFB, and that the IFB documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.

Before submitting a bid, each bidder must:

1. Examine the solicitation documents thoroughly for defects and questionable or objectionable material. Solicitation documents include this IFB, any attachments, plans referred to herein, and any other relevant documentation. Comments must be submitted in writing and received by the DOE, PCB **seven (7) days prior to bid opening**. This will allow for issuance of addenda, if necessary, and also prevents against the opening of defective offers.
2. Become familiar with State, local, and federal laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work.

Bidder shall submit offer using the exact forms or reproductions of such forms as provided and as otherwise instructed by this IFB. Faxed or electronically submitted offers will not be accepted or acknowledged and will be automatically rejected.

The Specifications, Special Conditions, General Conditions, and other documents referenced in or attached to the offer shall be considered a part of the offer submitted, whether or not attached to the offer at the time of submission. Such documents shall not be altered in any way; any alterations so made by the bidder may result in rejection of the offer.

An offer that contains any omission, erasure, addition not called for, conditional offer or irregularity of any kind may be rejected. Corrections, if necessary, shall be made by lining out the materials to be corrected and by inserting the correction as close to the line-out as possible. Every such correction must be initialed by the person who signed the offer.

Bidder shall submit his signed offer, together with the offer security when required, in a sealed envelope. The envelope shall be clearly identified with the company's name and address on the upper left corner and the IFB number and due date on the lower left corner.

Bids will be received only until the hour and date set for the opening. Whether or not offers are opened exactly at the established deadline, none will be received after that time. Unless otherwise stated, Bidder shall submit only one (1) offer. If more than one offer is submitted from any bidder, all bids from that Bidder shall be rejected for that item.

26. Confidential Information

If a Bidder believes that any portion of his proposal contains information that should be withheld as confidential, then the Procurement and Contracts Branch should be so advised in writing.

Bidder shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Such data shall accompany the bid, be clearly marked, and shall be readily separable from the bid in order to facilitate eventual public inspection of the non-confidential portion of the bid.

Pursuant to Section 3-122-58, Hawaii Administrative Rules (HAR), the head of the purchasing agency or designee shall consult with the Attorney General and make a written determination in accordance with Chapter 92F, Hawaii Revised Statutes (HRS). If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with Section 92F-42(12), HRS.

27. Certification of Independent Cost Determination

By submitting a bid in response to this solicitation, Bidder certifies as follows:

1. The costs in this IFB have been arrived at independently, without consultation, communication, or agreement with any other bidder, as to any matter relating to such costs for the purpose of restricting competition.
2. Unless otherwise required by law, the costs which have been quoted in this IFB have not been knowingly disclosed by the bidder prior to award, directly or indirectly, to any other bidder or competitor prior to the award of the contract.
3. No other attempt has been made or will be made by the bidder to indicate any other person or firm to submit or not to submit for the purpose of restricting competition.

28. Acceptance of Bid

Acceptance of bid, if any, will be made within sixty (60) calendar days after the opening of bids and the prices quoted by the Bidder shall remain firm for the sixty (60)-day period.

BID EVALUATION

29. Disqualification of Offers

Any one or more of the following causes will be considered as sufficient for disqualification of the offer:

1. Offer not signed by an authorized individual.
2. More than one offer from an individual, firm, corporation or joint venture under the same or different names.
3. Evidence of collusion among bidders or prices obviously unbalanced, lack of responsibility and cooperation as shown by past work, being in arrears on existing contracts with the State of Hawaii, or defaulting on previous contract(s).
4. Lack of proper equipment and/or sufficient experience to perform the work contemplated.
5. Offer received after specified deadline for opening of offers.
6. Evidence of any noncompliance with any applicable law, any unauthorized additions or deletions, of submission of conditional offer, incomplete offer, or irregularities of any kind which may make the offer incomplete, indefinite, or ambiguous as to its meaning.

30. Method of Award

Award, if made, shall be made to the responsive and responsible bidder submitting the lowest **TOTAL SUM BID**. Bidder must bid on all items to qualify for award. Normally, award shall be made within sixty (60) calendar days after opening but in no case will award be made until all necessary investigations are made.

In the event the bid price(s) submitted exceed available funds, or if the Total Sum Bid of the qualified low offer exceeds allotted funds, the DOE reserves the right to delete any tree(s) in a school or any school(s) to allow award to be made within allotted funds.

31. Protest

Pursuant to §103D-701, HRS and §126, HAR, "Legal and Contractual Remedies," an actual or prospective offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. Any protest shall be submitted in writing to the DOE's Chief Procurement Officer, c/o the Procurement Office at the above address.

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract.

The notice of award letter(s), if any, resulting from this solicitation shall be posted in the DOE Procurement and Contracts Branch at the Waipahu Civic Center, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797.

CONTRACT EXECUTION

32. Contract Award

CONTRACTOR receiving award(s) of \$25,000 or more shall be required to enter into a formal written contract. A performance bond shall be required for this IFB. Upon execution of contract, the DOE will issue a fully executed copy to the CONTRACTOR. No work will be undertaken by the CONTRACTOR prior to the commencement date specified on the contract. The DOE is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the CONTRACTOR prior to official starting date.

33. Performance Bond

Performance bond shall be required for contracts \$25,000 or more. At the time of contract execution, the successful bidder(s) shall file good and sufficient performance bond on the form furnished by the DOE in an amount equal to TWENTY-FIVE PERCENT (25%) of the amount of the contract price.

Acceptable performance and payment bonds shall be limited to the following:

1. Legal tender;
2. Surety bid bond; or
3. Certificate of deposit; share certificate; cashier's, treasurer's, teller's, or official check drawn by or a certified check accepted by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

If any of the forms of deposit listed in No. 3 above is submitted, each instrument shall not exceed \$100,000. If the required amount of the performance and payment bond totals over \$100,000, more than

one (1) instrument not exceeding \$100,000 each issued by different financial institutions shall be acceptable.

Certificate of deposit or share certificate submitted as performance and payment bond shall be (1) in the name of bidder's company, (2) for the sum of the performance and payment bond amount, plus the savings institution's maximum penalty for early withdrawal, and (3) assigned to the Procurement Officer, Procurement and Contracts Branch. Bidders may obtain an assignment form from the Procurement and Contracts Branch.

34. Responsibility of Contractor

CONTRACTOR shall furnish proof of compliance with these requirements of §3-122-112, HAR:

- Chapter 237, tax clearance;
- Chapter 383, unemployment insurance;
- Chapter 386, workers' compensation;
- Chapter 392, temporary disability insurance;
- Chapter 393, prepaid health care; and
- One of the following:
 1. Be registered and incorporated or organized under the laws of the State of Hawaii (hereinafter referred to as a "Hawaii business"); or
 2. Be registered to do business in the State of Hawaii (hereinafter referred to as a "compliant non-Hawaii business").

The following documents shall be submitted to the DOE, PCB as proof of compliance with the above-referenced requirements. Each certificate must be valid for six (6) months from the most recent approval date.

1. DOTAX *Tax Clearance Certificate*

- instructions: <http://www6.hawaii.gov/tax/2006/a6ins.pdf>
- form: <http://www6.hawaii.gov/tax/2006/a6.pdf>;

2. DLIR *Certificate of Compliance* (regarding Unemployment Insurance, Workers' Compensation, Temporary Disability Insurance, and Prepaid Health Care);

- instructions & form: <http://hawaii.gov/labor/forms/forms/DCD-LIR27.pdf>

3. DCCA *Certificate of Good Standing* (sole proprietorships are not required to register with the DCCA and are therefore not required to submit this certificate)

- <http://www.ehawaii.gov/dcca/cogs/exe/cog.cgi>

35. Hawaii Compliance Express.

Alternately, instead of separately obtaining these certificates from each of the respective State departments, Contractors may choose to obtain a *Certificate of Vendor Compliance* through the Hawaii Compliance Express (HCE). This service allows Contractors to register online through a simple wizard interface at <http://vendors.ehawaii.gov/hce/splash/welcome.html>. The *Certificate of Vendor Compliance* provides current compliance status as of the issuance date, satisfies requirements of Chapter 103D-310(c), HRS, and is therefore acceptable for contracting purposes. Contractors that elect to use HCE services are required to pay an annual fee of \$15.00 to the Hawaii Information Consortium, LLC (HIC).

36. Timely Submission of All Certificates

The above certificates should be applied for and submitted to the DOE, PCB as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

37. Failure to Execute Contract

Failure to execute a contract as required within ten (10) calendar days or such further time as the Superintendent may allow after the bidder has received the contract for execution shall be just cause for the annulment of the award. The Superintendent may award the contract to the next lowest responsible bidder or may call for other offers, whichever is deemed to be in the best interest of the DOE.

38. Availability of Funds

This contract is subject to the availability of funds. Pursuant to Section 103D-309, HRS, except in certain instances, no contract entered into between the STATE and the CONTRACTOR shall be binding or of any force unless the Superintendent certifies that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the contract.

If the contract calls for performance or payment in more than one fiscal year (July 1 to June 30), the Superintendent may certify only that portion of the total funds allocated to satisfy the STATE's obligations for payments in the current fiscal year. In that event, the STATE will not be liable for the unpaid balance beyond the end of the current fiscal year, and availability of funds in excess of the amount certified shall be contingent upon future appropriations or special fund revenues. All partially-funded contracts shall be enforceable only to the extent that funds are certified as available. The STATE agrees to notify the CONTRACTOR of such non-allocation at the earliest possible time. The STATE shall not be penalized in the event this provision is exercised. This provision is not meant to permit the STATE to terminate the contract in order to acquire similar equipment or services from a third party.

39. Wage Certificate

Section 103-55, HRS, provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. CONTRACTOR is advised that in the event of an increase in wage rates to public employees performing similar work during the contract period, employees shall be paid wages no less than those increased wages.

CONTRACTOR is obliged to notify its employees performing work under this contract of the provisions of Section 103-55, HRS, and of the current wage rate for public employees performing similar work. Contractor may meet this obligation by posting a notice to this effect in the CONTRACTOR's place of business in an area accessible to all employees, or CONTRACTOR may include such notice with each paycheck or pay envelope furnished to the employee.

To assist the CONTRACTOR in determining whether the work his employees are to perform under this contract is similar to that performed by public employees, attached are class specifications for public employee positions that perform Tree Trimming duties. Effective March 1, 2009, the basic hourly wages paid to the State positions are as follows:

<u>Class</u>	<u>Hourly Rate</u>
Tree Trimmer-Truck Driver (BC05)	\$17.77
Tree Trimmer (BC07)	\$19.22

The DOE reserves the right to inspect the CONTRACTOR's wage records to ensure compliance with Section 103-55, HRS.

40. Liability Insurance

The CONTRACTOR shall maintain in full force and effect, during the life of this contract, liability and property damage insurance. This insurance shall protect the CONTRACTOR and his subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by himself or by a subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the contract, the insurance policy or policies shall name the subcontractor as additional insured.

As an alternative to the CONTRACTOR providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, CONTRACTOR may require subcontractor to provide its own insurance which meets the requirements herein. It is understood that a subcontractor's insurance policy(ies) are in addition to the CONTRACTOR's own policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the CONTRACTOR, including its subcontractor(s) where appropriate:

- Commercial General Liability: The CONTRACTOR shall maintain commercial general liability insurance covering all operations by or on behalf of the CONTRACTOR on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Such insurance shall have these minimum limits and coverage:
 - \$1,000,000 per occurrence;
 - \$2,000,000 general aggregate on a "per project" basis
- Automobile Liability: The CONTRACTOR shall maintain business auto liability covering or relating to any auto (including owned, hired and non-owned autos). Such insurance shall have these minimum limits and coverage:
 - \$1,000,000 per accident
- Workers' Compensation: The CONTRACTOR shall maintain workers' compensation and employer's liability insurance that comply with statutory limits.

Each insurance policy required by this contract, including a subcontractor's policy, shall contain the following clauses:

- 1) "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the State of Hawaii, Department of Education, PCB, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797."
- 2) "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
- 3) "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements.

Upon CONTRACTOR's execution of the contract, the CONTRACTOR agrees to deposit with the DOE certificate(s) of insurance necessary to satisfy the DOE that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the DOE during the entire term of this contract, including those of its subcontractor(s), where appropriate. Upon request by the DOE, CONTRACTOR shall be responsible for furnishing a copy of the policy(ies).

Failure to secure and maintain the required insurance in accordance with this section shall be considered a major breach of the Contract and shall serve as grounds for immediate contract termination. Should the State be forced to expend funds that would have been covered under the insurance, the CONTRACTOR agrees to reimburse the State of Hawaii for such funds.

All insurance described herein shall be primary and cover the insured for all work to be performed under the contract and all incidental work performed or directly/indirectly connected.

The procuring of such required insurance shall not be construed to limit CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy(ies) of insurance, CONTRACTOR shall be obliged for the full and total amount of any damage, injury, or loss caused by the CONTRACTOR, its employees, officers, or agents, in connection with this Contract.

CONTRACT PRICE ADJUSTMENTS

41. Adjustment Pursuant to Section 103-55, HRS – Wage Rates

At the time of contract award, only the current wages of State employees performing similar work were known. Should these wages increase during any period of the contract including supplements, the CONTRACTOR may request an increase in contract price. The increase requested must result in increase in wages to the CONTRACTOR's employees performing the work under this agreement, including any increase in benefits required by law that are automatically increased as a result of increased wages, such as federal old age benefits, workers' compensation, temporary disability insurance, unemployment insurance, and prepaid public health insurance.

The CONTRACTOR's request for increase must meet the following criteria:

1. At the time of a request, CONTRACTOR must provide documentation to show that he is in compliance with Section 103-55, HRS, i.e., his employees are being paid no less than the current wage of the public position listed herein. Documentation shall include the employees' payroll records and a statement that the employees are being utilized for this contract.
2. At the time of bidding, the CONTRACTOR must have specified on the appropriate offer page, the percentage of the unit bid price that represents labor costs. If the CONTRACTOR fails to specify the percentage, the CONTRACTOR's request for increase will not be considered.
3. Request for increase must be made writing to the Procurement and Contracts Branch, on a timely basis.
 - a. Request for increase for the initial contract period must be made as soon as practicable after the State wage agreements are made public. Approved request will be retroactive to the date of increase for the State employee.
 - b. Request for increase for supplemental period of the contract must be made prior to the start of the supplement. CONTRACTOR is to call the Procurement and Contracts Branch Purchasing Specialist named on the cover of this IFB to obtain the current wage information.

If the CONTRACTOR meets the above criteria in its request for contract price increase, the following formula shall be used to calculate the increase:

$$I = (A * X) (B)$$

Where, I = Dollar amount increase in contract offer price due to increase in State wages occurring subsequent to bid opening date;

A = Original contract offer price;

X = Percentage of bid offer price representing labor costs;

B = Percentage increase in wages of public employees performing similar work.

In order to be considered for price adjustment, Bidder must indicate on the appropriate offer page the percentage of the unit price offer that represents labor. The percentage will not change during the term of the contract, including the extension period, and will be used to calculate the increase in price allowed herein.

The increase shall be reflected in either a contract modification or in the supplemental agreement issued for any extended period of the initial contract.

42. New Locations

The CONTRACTOR shall perform the service at the schools in which the Palm Trimming requirements are located. It is the CONTRACTOR's responsibility to examine the location and condition of the palms for each site.

The DOE shall notify the CONTRACTOR of any subsequent change to the numbers and locations listed in the Exhibits for the specific district and furnish any other pertinent information necessary for the proper execution of the contract.

It is understood and agreed that in addition to the schools listed herein, CONTRACTOR shall furnish services specified herein to any new school or any school not initially listed in this IFB, when such services are required, at prices as negotiated by the CA.

The DOE reserves the right to add or delete whole schools to the contract and will make adjustments by contract modifications. The DOE also reserves the right to add or delete individual palms to this contract.

The CONTRACTOR shall not refuse to accept the additional trimmings. Any increase or decrease in contract price for additional or deleted palms shall be based on prices as negotiated by the CA and shall become binding only upon issuance of a contract modification or purchase order issued by the DOE.

Palm trimming work, beyond the scope of this contract, may be required. When situations occur, the CONTRACTOR shall notify the CA immediately. After approval, the CONTRACTOR shall provide the services in accordance with these contract documents. The CONTRACTOR will be compensated separately from the contract; however, the DOE reserves the option to purchase services beyond the scope of the contract from vendors other than the CONTRACTOR.

PERFORMANCE OF CONTRACT

43. Authority of the DOE

The DOE shall decide all questions which may arise as to the work performed, as to the manner of such performance, as to the interpretation of any term, condition or provision, as to the applicability and interpretation of any law, rule or regulation, policies and procedures, as to compensation, or additional reason to service, and as to any other matter which may arise under the Contract. The decision of the DOE in such matters shall be final provided that decision is not in violation of law and not arbitrary, capricious or characterized by abuse of discretion.

44. Time of Completion

All work under this contract shall be completed by **May 31, 2010**, or within such additional time as authorized by the CA. Upon receipt of CONTRACTOR's written notice of completion, the DOE will schedule an inspection of work; inspection should be completed within one week of notification by CONTRACTOR. CONTRACTOR shall correct any deficiencies or unsatisfactory work within one (1) week of DOE's notification. In the event the CONTRACTOR fails to satisfactorily complete all work within the specified period, liquidated damages as specified herein will be assessed.

45. Extension of Completion Time

CONTRACTOR shall complete all palm trimming within the time specified in the contract. However, CONTRACTOR will not be held responsible for delays due to reasons beyond his control, provided he submits written notification with justification of such delays prior to the completion date. This notification shall be submitted to the Procurement and Contracts Branch and shall include documentation evidencing that the delay was, in fact, due to reasons beyond the CONTRACTOR's control and shall specify a revised completion date.

No extension of completion time will be considered without proper documentation.

PAYMENT

46. Invoicing

The CONTRACTOR shall submit invoices for partial or total payment upon completion of trimming at the specified schools for the specified trim dates. The invoice shall include the IFB number, contract number, school district, and service period. The CONTRACTOR shall submit an **original** of the invoice(s) to:

Department of Education
Auxiliary Services Branch
1037 South Beretania Street
Honolulu, Hawaii 96814
Attention: Ms. Anna Tongson

Invoice shall include an itemized listing of schools and dates of service for each completed school. Payments shall be made on the basis of the actual number of schools completed at the prices bid herein, upon certification by the CA that the CONTRACTOR has satisfactorily performed the services specified for that period. Should an invoice include a school which is not complete or requires corrective work, payment for the work at the school will not be paid until all work is completed. Incomplete invoices will be returned to the CONTRACTOR without processing.

For authorized emergency or extra work approved by the CA, a separate detailed invoice is required. Invoices shall contain date of work, description of the work performed, location of work, and detailing the hours of labor or the quoted offer price, the total amount, and purchase order number authorizing the work. Any extra work will be paid for outside of this contract. Invoice payments may be delayed or rejected because of missing or incomplete paperwork.

47. Partial Payment

At the CONTRACTOR's request, the DOE will process partial payment(s) of not less than \$25,000 based on the unit bid price per for each school when all work at those schools, have been satisfactorily completed. In the event work at any school is not satisfactorily completed, the DOE reserves the right to withhold payment for the school.

48. Payment

Section 103-10, HRS, provides that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the DOE may reject any bid submitted with a condition requiring payment within a shorter period. Further, the DOE may reject any bid submitted with a condition requiring interest payments greater than that allowed by §103-10, HRS, as amended.

The DOE will not recognize any requirement established by the CONTRACTOR and communicated to the DOE after award of the contract, which requires payment within a shorter period or interest payment not in conformance with statute.

The **final payment** on the contract shall be for services rendered during the billing period just prior to the contract expiration date. The following shall accompany the final payment invoice:

- A valid (not over two (2) months old) and **original Tax Clearance Certificate (TCC)**, with an original green “certified copy” stamp, must accompany the final payment invoice. In accordance with Section 103-53, HRS, all Contractors must provide a TCC from the State of Hawaii Department of Taxation and U.S. Internal Revenue Service as a prerequisite to receipt of final payment.
- The attached *Certification of Compliance for Final Payment* (DOE Form-22) with an original signature of an authorized representative of the Contractor.
- In lieu of the above, CONTRACTOR may submit an original *Certificate of Vendor Compliance* as issued by the State Procurement Office via an online system, also referred to as “Hawaii Compliance Express.” Details regarding this online application process can be viewed at: <http://vendors.ehawaii.gov/hce/>.

APPROVALS

49. State’s General Conditions

Nothing in the Special Conditions shall supersede the General Conditions attached hereto. The Special Conditions shall serve to supplement the General Conditions, except where a conflict exists between the General Conditions and Special Conditions, in which case the Special Conditions shall apply.

50. Approvals

Any agreement arising out of this offer may be subject to the approval of the Department of the Attorney General as to form, and is subject to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive.

CERTIFICATION OF COMPLIANCE FOR FINAL PAYMENT
(Reference §3-122-112, HAR)

Reference: _____
(Contract Number) (Contract Title)

_____ affirms it is in
(Company Name)
compliance with all laws, as applicable, governing doing business in the State of Hawaii to include the following:

1. Chapter 383, HRS, Hawaii Employment Security Law – Unemployment Insurance;
2. Chapter 386, HRS, Worker's Compensation Law;
3. Chapter 392, HRS, Temporary Disability Insurance;
4. Chapter 393, HRS, Prepaid Health Care Act; and

maintains a "Certificate of Good Standing" from the Department of Commerce and Consumer Affairs, Business Registration Division.

_____ further
(Company Name)
acknowledges that making a false statement shall cause its suspension and may cause its debarment from future awards of contracts.

Signature: _____

Print Name: _____

Title: _____

Date: _____

**DEPARTMENT OF PERSONNEL SERVICES
STATE OF HAWAII**

Class Specifications
For the Class:

TREE TRIMMER

Duties Summary:

Operates and maintains a truck with a hydraulic powered aerial platform in trimming and pruning trees on grounds under the jurisdiction of the State Comptroller; climbs trees with or without the aid of climbing spikes; and performs other related duties as assigned.

Distinguishing Characteristics:

This class is distinguished by its responsibility for operating and maintaining a truck with an aerial platform in the daily operation of tree trimming. The truck and platform are necessary to enable the trimmer to efficiently perform cutting operations at heights. A basic requirement of this class is the ability to manipulate the various brakes, levers and clutches that are mounted on the truck and platform. Work assignments are received from a foreman who also revises work practices. However, positions in this class are responsible for work site operations. This involves overseeing the use of machinery, disposal of debris, and that safe practices and work instructions are followed by other members of the crew.

Positions in this class perform manual trimming operations when mechanical equipment is inoperative or in situations where trimming will be facilitated without the use of truck and platform. Also inherent in this class is the responsibility for the maintenance of machinery and accountability for all tools and equipment used in tree trimming operations.

Examples of Duties:

Drives the truck to and from job sites; clears work area of vehicles and other property that may be damaged by falling branches and other debris; secures truck for operation by seeing that all safety equipment is in place; operates the aerial platform to attain the desired height and angle; directs the placing and use of guy lines; selects and makes cuts; paints pruning compound on scars left by cuts; oversees the cutting and disposal of debris produced by trimming; climbs trees using ladders, climbing spikes and other climbing equipment; may drive heavy dump trucks to haul rubbish to incinerator.

Knowledge, Skills and Abilities required:

Knowledge of: The operation and maintenance of a truck and hydraulic equipment; motor vehicle operation ordinances; the use and care of pruning tools, power saws and climbing equipment; safety practices necessary for operating an aerial platform and working at heights; general tree trimming techniques and practices.

Ability to: Operate a truck with an aerial platform; operate heavy trucks; understand and carry out oral and written instructions; utilize various power tools used in tree trimming; select and make appropriate cuts on trees; oversee the work of others; climb high trees using climbing spikes and other equipment.

This is an amendment (format change only) to the class specification for the class TREE TRIMMER approved on January 14, 1985.

DATE APPROVED: 4/25/91

/S/ Diana H. Kaapu
for SHARON Y. MIYASHIRO
Director of Personnel Services

Minimum Qualification Specifications
for the Class:**TREE TRIMMER****Experience and Training Requirement:**

One (1) year of work experience in the care of grounds or other landscaped areas which involved trimming and pruning trees, shrubs, and hedges utilizing power saws and other tree trimming tools and equipment, climbing trees with or without the aid of climbing spikes and which demonstrated knowledge of proper safety precautions necessary in working at heights, and operating and maintaining trucks having a factory-rated capacity of over 1-1/2 tons; or an equivalent combination of experience and training.

Quality of Experience:

Possession of the required number of years of experience will not in itself be accepted as proof of qualification for a position. The applicant's overall experience must have been of such scope and level of responsibility as to conclusively demonstrate that he/she has the ability to perform the duties of the position for which he/she is being considered.

Licensed Required:

Possession of a valid State of Hawaii motor vehicle operator's license Type 3, 4 or appropriate Commercial Driver's License with proper endorsements, as applicable.

Selective Certification:

Specialized knowledge, skills and abilities may be required to perform the duties of some positions. In such positions, certification may be restricted to eligible who possess the pertinent experience and/or training required to perform the duties of the position.

Agencies requesting selective certification must show the connection between the kind of training and/or experience on which they wish to base selective certification and the duties of the position to be filled.

Tests:

Applicants may be required to qualify on an appropriate examination.

Physical and Medical Requirements:

Applicants must be physically able to perform, efficiently and effectively, the essential duties of the position which typically require the ability to read without strain printed material the size of typewritten characters, glasses permitted, and the ability to hear the conversational voice, with or without a hearing aid, or the ability to compensate satisfactorily. Handicaps in these or other areas will not automatically result in disqualification. Those applicants who demonstrate that they are capable of performing the essential functions of the position will not be disqualified under this section.

Any condition which would cause applicants to be a hazard to themselves or others is cause for disqualification.

Any disqualification under this section will be made only after a review of all pertinent information including the results of the medical examination, and requires the approval of the Director.

Mental/Emotional Requirements:

All applicants must possess emotional and mental stability appropriate to the job duties and responsibilities and working conditions.

This is amendment to the minimum qualification specification for the class Tree Trimmer, approved on January 14, 1985.

DATE APPROVED: 4/25/91

/S/ Diana H. Kaapu
SHARON Y. MIYASHIRO
Director of Personnel Services

**DEPARTMENT OF PERSONNEL SERVICES
STATE OF HAWAII**

.....
Class Specifications
For the Class:

TREE TRIMMER - TRUCK DRIVER

Duties Summary:

Climbs and trims as well as removes a variety of trees; applies chemicals and does minor tree surgery on diseased or injured trees; operates medium and heavy trucks and other comparable mobile equipment; and performs other related duties as assigned.

Climbs and trims as well as removes a variety of trees; applies chemicals and does minor tree surgery on diseased or injured trees; operates medium and heavy trucks and other comparable mobile equipment; and performs other related duties as assigned.

Distinguishing Characteristics:

This class is distinguished by its performance of both tree trimming and truck driving duties as a regular assignment.

Examples of Duties:

Climbs a variety of trees with or without the aid of spikes, or utilizes a hydraulic or mechanical ladder and other equipment to reach the necessary heights; uses hand, pole, and power saws, cane knives, and other hand tools to cut tree branches; paints all cuts two inches or more in diameter with tar or other compound; digs out dry rot from tree trunks with a pruning knife and fills the resulting cavity with cement; applies lead arsenate or other chemical to areas of trees infested with pests or fungi; feeds limbs and other trimmings into a "chipper;" operates medium and heavy trucks and other mechanized equipment, such as a hoist; directs vehicular and pedestrian traffic at the job site.

Knowledge, Skills and Abilities Required:

Knowledge of: General tree trimming techniques and practices; tools and equipment used in tree trimming; laws and regulations governing the operation of motor vehicles on streets and highways; safety practices and procedures.

Ability to: Climb trees with or without the aid of spies; work above the ground at varying heights; operate hand and power tools and equipment; operate a truck and other mobile equipment; understand and observe traffic laws and regulations; make minor emergency repairs to trucks; understand and follow oral and written instructions.

This is an amendment (format change only) to the class specification for the class TREE TRIMMER-TRUCK DRIVER approved on January 11, 1985.

DATE APPROVED: April 23, 1991

/S/ Diana H. Kaapu
for SHARON Y. MIYASHIRO
Director of Personnel Services

Minimum Qualification Specifications
for the Class:

TREE TRIMMER - TRUCK DRIVER

Experience and Training Requirement:

One (1) year of experience in the care and maintenance of grounds and landscaped areas, including the trimming, pruning, and caring of trees and shrubs, and some truck driving; or an equivalent combination of experience and training.

Quality of Experience:

Possession of the required number of years of experience will not in itself be accepted as proof of qualification for a position. The applicant's overall experience must have been of such scope and level of responsibility as to conclusively demonstrate that he/she has the ability to perform the duties of the position for which he/she is being considered.

Licensed Required:

Possession of a valid State of Hawaii motor vehicle operator's license Type 3, 4 or appropriate Commercial Driver's License with proper endorsements, as applicable.

Selective Certification:

Specialized knowledge, skills, and abilities may be required to perform the duties of some positions. In such positions, certification may be restricted to eligibles who possess the pertinent experience and/or training required to perform the duties of the position.

Agencies requesting selective certification must show the connection between the kind of training and/or experience on which they wish to base selective certification and the duties of the position to be filled.

Tests:

Applicants may be required to qualify on an appropriate examination.

Physical and Medical Requirements:

Applicants must be physically able to perform, efficiently and effectively, the essential duties of the position which typically require the ability to read without strain material the size of typewritten characters, glasses permitted, and the ability to hear the conversational voice, with or without a hearing aid, or the ability to compensate satisfactorily. Handicaps in these or other areas will not automatically result in disqualification. Those applicants who demonstrate that they are capable of performing the essential functions of the position will not be disqualified under this section.

Any condition which would cause applicants to be a hazard to themselves or others is cause for disqualification.

PART II
TRIMMER-TRUCK DRIVER

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Any disqualification under this section will be made only after a review of all pertinent information including the results of the medical examination, and requires the approval of the Director.

Mental/Emotional Requirements:

All applicants must possess emotional and mental stability appropriate to the job duties and responsibilities and working conditions.

This is an amendment to the minimum qualification specification for the class TREE TRIMMER-TRUCK DRIVER approved on January 11, 1985.

DATE APPROVED: 4/23/91

/S/ Diana H. Kaapu
for SHARON Y. MIYASHIRO
Director of Personnel Services

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
- 7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 - 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 - 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 - 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 - 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 - 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.